14. On October 30, 1969, the aforesaid defendant Richard L. Judd, acting in his capacity as Executive Secretary of the Student Affairs Committee, notified the petitioner Mr. Lawrence Stub that the request for recognition by the Students for a Democratic Society had been disapproved by the defendant F. Don James, a copy of such memorandum being attached hereto as Petitioners' Exhibit C.

15. On October 30, 1969, the defendant F. Don James issued a memorandum in which he denied recognition of a local chapter of Students for a Democratic Society. In said memorandum, the defendant F. Don James stated as follows:

> "Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:
>
> > 'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'
>
> The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the college, they wish to become a local

chapter of an organization which openly repudiates such a policy.

Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms, and Responsibilities of Students that 'college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition' — these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central."

A copy of said memorandum is attached hereto as Petitioners' Exhibit D.

16. On November 6, 1969, about fifteen students at Central Connecticut State College, some being amongst the eight Petitioners and some not being amongst the eight Petitioners herein, met at a coffee shop on said campus, said coffee shop being under the general direction and administration of the said College. The avowed purpose of said meeting was to discuss the action of the defendant F. Don James of October 30, 1969, wherein recognition was denied to the local chapter of Students for a Democratic Society.

17. While said students were meeting, they were approached by the defendants Richard L. Judd and Cletus Clow who informed them that they could not hold said meeting and told them to "cease and desist" from meeting on col-

lege property. The defendant Richard L. Judd left with said students a written memorandum to the aforesaid effect, said written memorandum being attached hereto as Petitioners' Exhibit E.

18. At all times pertinent hereto, the Petitioners followed the procedure set forth by the administration to obtain recognition for the aforesaid chapter of Students for a Democratic Society.

19. Prior to October 30, 1969, the defendants F. Don James and Richard L. Judd were informed by the Petitioners, or some of them, that the proposed local chapter of Students for a Democratic Society would in no way be affiliated with any national organization also known by the same name (SDS) and would hold no allegiance to any officer of any such national organization.

20. The Petitioners herein are representative parties on behalf of all students at Central Connecticut State College who are engaged in rights protected under the First, Fifth and Fourteenth Amendments to the United States Constitution; that the members of the class are so numerous that joinder of all members is impracticable; that there are questions of law or fact common to the entire class; that the claims of the representative parties are typical of the claims of said class; that the representative parties will fairly and adequately protect the interests of the said class; and that the defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class as a whole.

21. The defendants and/or their agents, servants, employees and others under their direction and control and each of them, separately and in concert, by denying official recognition as a student organization on campus to the local chapter of Students for a Democratic Society at Central Connect-

icut State College are depriving and threatening to deprive the Petitioners and all other members of said class similarly situated of their rights of freedom of speech, press and assembly secured to them by the First and Fourteenth Amendments to the United States Constitution.

22. Numerous organizations, political and non-political in nature, have been in the past recognized by the administration of the said Central Connecticut State College as official campus student organizations and are currently operating as such. By denying such recognition to the aforesaid Students for a Democratic Society chapter, the defendants and/or their agents, servants and employees acted arbitrarily, unreasonably and capriciously in violation of the rights of the Petitioners and all other members of said class similarly situated secured to them by the Fourteenth Amendment to the United States Constitution.

23. By denying recognition to Students for a Democratic Society as an approved campus organization, the defendants and/or their agents, servants, employees and others under their direction and control and each of them, separately and in concert, have deprived the Petitioners and all other members of said class similarly situated of their rights to the equal protection of the law as secured to them by the Fourteenth Amendment to the United States Constitution.

24. On or about December 1, 1969, a publication known as "The Central Alumnus", Volume 2, No. 2, Winter, 1970, the official publication of the alumni organization of the aforesaid Central Connecticut State College, contained therein an article signed by the defendant F. Don James, in which the aforesaid F. Don James was quoted as saying:

"Another action I wish to share with you is my veto of a student-faculty committee recommendation that a

chapter of the Students for a Democratic Society be allowed at Central.

I cannot sanction an organization that openly advocates the destruction of the very ideals and freedoms upon which the academic life is founded. In denying the SDS official recognition, I have emphasized that the philosophies, actions and violence of that organization are counter to the official policy of the College. That policy, stated in the Statement of Student Rights, Freedoms and Responsibilities, and approved by the students, faculty and administration is:

'Students do not have the right to invade the privacy of others, to damage property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'"

25. At all times pertinent hereto, the aforesaid Board of Trustees had knowledge of the action of the aforesaid defendants F. Don James, Richard L. Judd and Cletus Clow.

26. The effect of the actions of all of the defendants herein has been to impose prior restraints upon the rights of the Petitioners and other members of said class similarly situated and to violate their rights under the First and Fourteenth Amendments of freedom of speech, press and assembly, and subject the Petitioners and other members of said class similarly situated to a denial of their rights under the Fifth and Fourteenth Amendments to the United States Constitution and to further subject the Petitioners and other members of said class similarly situated to a deprivation of their rights of due process of law in violation of the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States.

27. The Petitioners and others similarly situated have the right to organize a chapter for Students for a Democratic

Society, which right is presumptively protected by the First and Fourteenth Amendments to the United States Constitution. The denial of such recognition and the aforesaid "cease and desist" order threatened their rights under the United States Constitution and have a "chilling effect" on the exercise of First Amendment freedoms.

28. By reason of the conduct of the defendants as aforesaid, the civil rights of the Petitioners and other members of said class similarly situated under the First, Fifth and Fourteenth Amendments to the United States Constitution have been violated to their irreparable harm. The Petitioners and other members of said class similarly situated have no adequate remedy at law, and immediate and irreparable injury, loss and damage will result to the Petitioners and others similarly situated if a preliminary and permanent injunction is not issued ordering the defendants to afford official recognition to the chapter of the Students for a Democratic Society as an official campus student organization.

WHEREFORE, The Petitioners pray:

1. That this Court assume jurisdiction of this cause.

2. That this Court adjudge and declare the determination and acts of the defendants as hereinbefore set forth in violation of the articles, amendments, regulations and usages as set forth above.

3. That this Court issue a preliminary injunction restraining and preventing the defendants and their agents, servants and employees from interfering with the Petitioners and others similarly situated from meeting as an organization and participating in the activities of a local chapter for Students for a Democratic Society.

4. That this Court issue a preliminary injunction ordering and directing all of the defendants herein to afford to the

Petitioners the right to form a chapter of Students for a Democratic Society and to afford such organization official recognition as a campus student organization.

5. That the Court issue a permanent injunction restraining and preventing the defendants and their agents, servants and employees from interfering with the Petitioners and others similarly situated from meeting as an organization and participating in the activities of a local chapter for Students for a Democratic Society.

6. That this Court issue a permanent injunction ordering and directing all of the defendants herein to afford to the Petitioners the right to form a chapter of the Students for a Democratic Society and to afford such organization official recognition as a campus student organization.

7. That this Court order such appropriate relief as shall be deemed just and proper.

PETITIONERS:

By ALVIN PUDLIN
Their Attorney
70 West Main Street
New Britain, Connecticut

By ABRAHAM S. SILVER
Their Attorney
70 West Main Street
New Britain, Connecticut

PETITIONERS' EXHIBIT A.

What follows is a brief statement of purpose of the group of students at CCSC who would like to form a local chapter of Students for a Democratic Society (S.D.S.).

1. Because the university is intended to be the arena of education, where there is an unfettered exchange of ideas, S.D.S. would provide *a forum* of discussion and self-education for students developing an analysis of American society and institutions, including higher education, and the world situation in general.

2. Because it is felt that ideas without parallel in deeds are empty and ephemeral, and that no area of life exists in a vacuum and unrelated to all other areas of life, S.D.S. would provide *an agency* for integrating thought with action so as to bring about constructive changes in the university, in American life, and the world.

3. Because of the responsibility of all peoples for the welfare of others, S.D.S. would provide a *coordinating body* for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or potentially in accord with the purposes of the CCSC chapter of S.D.S.

Officers: Lawrence Stub, Frank Ziecardi.

Procedures: (1) meetings once a week. (2) membership completely open to students and faculty. (3) *voluntary dues.* (4) elections held regularly (5) CCSC Students for a Democratic Society are not under the dictates of any National organization.

PETITIONERS' EXHIBIT C.

INTERDEPARTMENT MAIL

October 30, 1969

To: Mr. Lawrence Stub, Dr. Haines Brown

From: Richard L. Judd, Executive Secretary, Student Affairs Committee

This is to inform you that the request for the recognition of a chapter of the Students for a Democratic Society has been disapproved by the President of the College.

I am attaching a copy of the President's action in this regard.

RLJ/ab
enc.

PETITIONERS' EXHIBIT D.

MEMORANDUM

To: Dean Richard L. Judd, Executive Secretary, Student Affairs Committee

From: F. Don James

Date: October 30, 1969

Subj.:

In reply to your memorandum of October 16, 1969, concerning the recommendation of the Student Affairs Committee, I am pleased to approve the recognition of:

1. The Commuter Club as a campus organization with Mr. Henry S. Enck as faculty adviser.

2. The Physical Education Majors Association as a campus organization with Miss Mary Hoyle as faculty adviser.

3. The Liberal Party as a campus organization with Dr. Charles Kerr as faculty adviser.

4. The Italian Club (Il Circolo Italiano) as a campus organization with Mr. Giovanni Lonardo as faculty adviser.

I am disapproving recognition of a local chapter of Students for a Democratic Society.

Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

> "Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others."

The further statement on the request for recognition that "CCSC Students for a Democratic Society are not under the dictates of any National organization" in no way clarifies why if a group intends to follow the established policy of the Col-

3. All of the Petitioners herein, at all times pertinent hereto, were and are students at Central Connecticut State College, an institution of the State of Connecticut.

4. The defendant F. Don James, at all times pertinent hereto, was and is the acting Dean of Student Affairs at Connecticut State College and as such was and is its chief administrative officer.

5. The defendant Richard L. Judd, at all times pertinent hereto, was and is the actiong Dean of Student Affairs at Central Connecticut State College.

6. The defendant Cletus Clow, at all times pertinent hereto, was and is the Dean of Administrative Affairs of Central Connecticut State College.

7. The defendants Bernice C. Niejadlik, John F. Robinson, Thomas Grasso, Frank P. Cammarano, Clark Edwin Creed, Richard Gurney, Francis W. Hogan, Ernest A. Johnson, Laura Johnson, Alvin B. Wood, James F. McNally and James E. Dyer, at all times pertinent hereto, were and are all members of the Board of Trustees for the State Colleges of Connecticut, and as such Board determine policies for the administration of said college.

8. On September 16, 1969, a notice was published in the Central Connecticut State College *Recorder*, being the student newspaper at said college, announcing a forthcoming meeting to be held for the purposes of forming an organization known as the Students for a Democratic Society (SDS).

9. On a date after September 16, 1969, said meeting was held and the named Petitioners, or some of them, were present.

10. At said meeting, it was voted to request the administration at the aforesaid Central Connecticut State College

for official recognition as a student organization on the aforesaid campus.

11. On a date after September 17, 1969, the Petitioners, or some of them, sent to the defendant Richard L. Judd a written statement of the purpose of the aforesaid organization to be known as a local chapter of Students for a Democratic Society, which notice is attached hereto as Petitioners' Exhibit A.

12. Prior to September 9, 1969, the administration of Central Connecticut State College with the approval of the faculty issued a publication entitled "Statement on Rights, Freedoms and Responsibilities of Students." Section V. E. of said statement reads as follows:

> "College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publically (sic) and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition. Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others."

A copy of said Statement on Rights, Freedoms and Responsibilities of Students is attached hereto as Petitioners' Exhibit B.

13. On October 13, 1969, the Student Affairs Committee at said Central Connecticut State College by a vote of six to two voted to recommend to the aforesaid defendant F. Don James that the SDS chapter be given official recognition by the administration as a campus organization.

4. The defendants admit so much of paragraph 8 as alleges that on September 16, 1969, a notice was published in the Central Connecticut State College *Recorder*, being the student newspaper at said college, announcing a forthcoming meeting to be held for the purpose of forming an organization; all the remaining allegations are denied.

5. The defendants admit so much of Paragraph 22 as alleges that numerous organizations, political and non-political in nature, have been in the past recognized by the administration of the said Central Connecticut State College as official campus student organizations and are currently operating as such; all the remaining allegations are denied.

DEFENDANTS

ROBERT K. KILLIAN
Attorney General

F. MICHAEL AHERN
Assistant Attorney General

BERNARD F. McGOVERN, JR.
Assistant Attorney General

Their Attorneys

30 Trinity Street
Hartford, Connecticut 06115

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to all attorneys of record on the 19th day of March, 1970.

F. MICHAEL AHERN
Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CATHERINE J. HEALY ET ALS, PETITIONERS

v.

F. DON JAMES ET ALS, DEFENDANTS

CIVIL ACTION NO. 13721

MARCH 10, 1970

STIPULATION OF FACTS

The parties hereto agree and stipulate that the following are all of the facts in the above captioned matter:

1. All of the Petitioners herein, at all times pertinent hereto, were and are students at Central Connecticut State College, an institution of the State of Connecticut.

2. The defendant F. Don James, at all times pertinent hereto, was and is the President of the aforesaid Central Connecticut State College and as such was and is its chief administrative officer.

3. The defendant Richard L. Judd, at all times pertinent hereto, was and is the acting Dean of Student Affairs at Central Connecticut State College.

4. The defendant Cletus Clow, at all times pertinent hereto, was and is the Dean of Administrative Affairs of Central Connecticut State College.

5. The defendants Bernice C. Niejadlik, John F. Robinson, Thomas Grasso, Frank P. Cammarano, Clark Edwin Creed, Richard Gurney, Francis W. Hogan, Ernest A. Johnson, Laura Johnson, Alvin B. Wood, James F. McNally, and James E. Dyer, at all times pertinent hereto, were and are all

of the members of the Board of Trustees for the State Colleges of Connecticut, and as such Board determine policies for the administration of said college.

6. On September 16, 1969, a notice was published in the Central Connecticut State College *Recorder*, being the student newspaper at said college, announcing a forthcoming meeting to be held for the purposes of forming an organization known as the Students for a Democratic Society (SDS).

7. On a date after September 16, 1969, said meeting was held and the named Petitioners, or some of them, were present.

8. At said meeting, it was voted to request the administration at the aforesaid Central Connecticut State College for official recognition as a student organization on the aforesaid campus.

9. On a date after September 17, 1969, the Petitioners, or some of them, sent to the defendant Richard L. Judd a written statement of the purpose of the aforesaid organization to be known as a local chapter of Students for a Democratic Society, which notice is attached hereto as Petitioners' Exhibit A.

10. Prior to September 9, 1969, the administration of Central Connecticut State College with the approval of the faculty issued a publication entitled "Statement on Rights, Freedoms and Responsibilities of Students. Section V. E. of said statement reads as follows:

> "College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publically (sic) and priyately, and to support causes by orderly means. They may organize public demonstrations and protest gather-

ings and utilize the right of petition. Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others."

A copy of said Statement on Rights, Freedoms and Responsibilities of Students is attached hereto as Petitioners' Exhibit B.

11. On October 13, 1969, the Student Affairs Committee at said Central Connecticut State College by a vote of six to two voted to recommend to the aforesaid defendant F. Don James that the SDS chapter be given official recognition by the administration as a campus organization.

12. On October 30, 1969, the aforesaid defendant Richard L. Judd, acting in his capacity as Executive Secretary of the Student Affairs Committee, notified the petitioner Mr. Lawrence Stub that the request for recognition by the Students for a Democratic Society had been disapproved by the defendant F. Don James, a copy of such memorandum being attached hereto as Petitioners' Exhibit C.

13. On October 30, 1969, the defendant F. Don James issued a memorandum in which he denied recognition of a local chapter of Students for a Democratic Society. In said memorandum, the defendant F. Don James stated as follows:

"Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at

least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

> 'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'

The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the college, they wish to become a local chapter of an organization which openly repudiates such a policy.'

Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms and Responsibilities of Students that 'college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition' — these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central."

A copy of said memorandum is attached hereto as Petitioners' Exhibit D.

14. On November 6, 1969, about fifteen students at Central Connecticut State College, some being amongst the eight Petitioners and some not being amongst the eight Petitioners herein, met at a coffee shop on said campus, said coffee shop being under the general direction and administration of the said College. The avowed purpose of said meeting was to discuss the action of the defendant F. Don James of October 30, 1969, wherein recognition was denied to the local chapter of Students for a Democratic Society.

15. While said students were meeting, they were approached by the defendants Richard L. Judd and Cletus Clow who informed them that they could not hold said meeting and told them to "cease and desist" from meeting on college property. The defendant Richard L. Judd left with said students a written memorandum to the aforesaid effect, said written memorandum being attached hereto as Petitioners' Exhibit E.

16. At all times pertinent hereto, the Petitioners followed the procedure set forth by the administration to obtain recognition for the aforesaid chapter of Students for a Democratic Society.

17. Prior to October 30, 1969, the defendants F. Don James and Richard L. Judd were informed by the Petitioners, or some of them, that the proposed local chapter of Students for a Democratic Society would in no way be affiliated with any national organization also known by the same name (SDS) and would hold no allegiance to any officer of any such national organization.

18. On or about December 1, 1969, a publication known as "The Central Alumnus," Volume 2, No. 2, Winter, 1970, the official publication of the alumni organization of the afore-

said Central Connecticut State College, contained therein an article signed by the defendant F. Don James, in which the aforesaid F. Don James was quoted as saying:

> "Another action I wish to share with you is my veto of a student-faculty committee recommendation that a chapter of the Students for a Democratic Society be allowed at Central.
>
> I cannot sanction an organization that openly advocates the destruction of the very ideals and freedoms upon which the academic life is founded. In denying the SDS official recognition, I have emphasized that the philosophies, actions and violence of that organization are counter to the official policy of the college. That policy, stated in the Statement of Student Rights, Freedoms and Responsibilities, and approved by the students, faculty and administration is:
>
> 'Students do not have the right to invade the privacy of others, to damage property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.' "

19. At all times pertinent hereto, the aforesaid Board of Trustees had knowledge of the action of the aforesaid defendant F. Don James, Richard L. Judd and Cletus Clow.

PETITIONERS:

By ALVIN PUDLIN
Their Attorney

By ABRAHAM SILVER
Their Attorney

DEFENDANTS

By F. MICHAEL AHERN
Their Attorney

REPORT
of the
HEARING OFFICER,
Richard L. Judd

In Re: *Healey, et al., v. James, et al.*
Civil Action 13721

Hearings Held on 19 and 25 May 1970,
Room 207, Administration Building,
CENTRAL CONNECTICUT STATE COLLEGE

Errata and Miscellaneous

1. P. 17, line 27, Exhibit "B" should be "G"
2. P. 19, line 27, Exhibit "H" should be "I"
3. Hearing Officer's Exhibit "J" was not used, and therefore Exhibit letters run from "I" to "K"
4. Hearing Officer's Exhibit Exhibit "A" (Judge Clarie's decision) is not supplied in this report, but is available from the U.S. District Court Clerk's Office, Hartford, Connecticut.
5. Hearing Officer's Exhibit Exhibits "G", "H" and "I" are included only with the original and Copy Nos. 1-4 of this report. Copies are available from the U.S. Government Printing Office.

TRANSCRIPTION OF TAPE RECORDING AND HEARING CONDUCTED BY R.L. JUDD, ON 19 MAY 1970

DEAN JUDD: Good morning ladies and gentlemen; Dr. F. Don James, President of Central Connecticut State College, has duly authorized and appointed me, Richard L. Judd, as the Hearing Officer in this case. In this capacity, I now call the hearing to order.

Let the record show that according to my timepiece we are starting at 10:01 a.m. on the 19th of May 1970. This hearing is being held in accord with the ruling handed down by the United States District Judge Honorable Emmet T. Clarie on the 24th of April 1970 in Civil Action No. 13721 re: *Healey, et al., v. James et al.*

Judge Clarie ordered that the College, upon reasonable notice to the parties involved, hold the hearing to resolve certain questions which were raised by the applicants in this said Civil Action against the said defendants. Such hearing would give the petitioners an opportunity to be heard, and upon the findings of the overall record of such a hearing, the President of the College, Dr. James, would make his deci-

sion as to whether or not the application met the existing policy standards of the College which would qualify the applicant club for official campus recognition.

Also, in accordance with Judge Clarie's decision, during such hearing, the College administration may question said applicants in order that certain ambiguities may be clarified as well as the creditability of the representations made by representatives of the applying organization.

In this regard, I would like to enter into the record as Hearing Officer's Exhibit A, Judge Clarie's decision dated April 27, 1970. Now, will the clerk please mark that as Hearing Officer's Exhibit A.

I would like the record also to show on the 7th of May 1970, notice was served to the following individuals, Catherine J. Healey, James Vincent Carey, Edward John O'Neil, Paul Peter Brown, Theodore Robert Tester, Joseph A. Knowles, Lawrence Stub, and Peter Browne, informing them of this hearing and requiring of them that they advise the Office of the Dean of Student Affairs of their intention to be present no later than 12 noon, daylight saving time on the 18th of May 1970. I would like the clerk to enter into the record as Hearing Officer's Exhibit B, a copy of said letter which was sent by certified receipt requested mail to aforementioned parties.

[2] I would like the record also to show that on the 7th of May 1970, a letter was sent to Attornies Abraham Silver and Alvin Pudlin, informing them of the hearing to be conducted on this date and also requiring that if they intended to represent the plaintiffs in this case, written notice must be received in the same manner as herein before described. I would like a copy of the letter to be entered in the record as Hearing Officer's Exhibit C. Will the clerk please so mark.

Let the record also show that on the date of 8 May 1970, the Hearing Officer in his capacity as Acting Dean of Student Affairs received a letter from Attorney Abraham Silver, acknowledging the Dean of Student Affairs' letter of 7 May and advising him that he would be pre-

lege, they wish to become a local chapter of an organization which openly repudiates such a policy.

Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms and Responsibilities of Students that "college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition" — these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved "Statement on the Rights, Freedoms, and Responsibilities of Students" at Central.

F. Don James
PRESIDENT

fdj: lp

PETITIONERS' EXHIBIT E.

INTERDEPARTMENT MAIL

November 6, 1969

To: Mr. Lawrence Stub, Dr. Haines Brown

From: Richard L. Judd — Acting Dean, Student Affairs

Notice has been received by this office of a meeting of the "C.C.S.C. - S.D.S. on Thursday — November 6 at 7:00 p.m. at the Devils' Den".

Such meeting may not take place in the Devils' Den of the Student Center nor in or on any other property of the

college since the C.C.S.C. - S.D.S. is not a duly recognized college organization.

You are hereby notified by this action to cease and desist from meeting on college property.

RLJ/ab

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

CATHERINE J. HEALY ET ALS, PETITIONERS

v.

F. DON JAMES ET ALS, DEFENDANTS

CIVIL ACTION NO. 13721

ANSWER TO SUBSTITUTED COMPLAINT

1. Paragraphs 1, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, and 25 of the Substituted Complaint are admitted.

2. Paragraphs 20, 21, 23, 26, 27 and 28 of the Substituted Complaint are denied.

3. The defendants deny so much of paragraph two as alleges that they have acted and refused to act in a manner generally applicable to the class the plaintiffs purport to represent, thereby making appropriate preliminary and final injunctive relief; and also deny the inference that all of the students at Central Connecticut State College have reached their majority as have the petitioners herein; the remaining allegations are admitted.

sent to represent the plaintiffs at the time of the hearing. A copy of this letter is introduced as Hearing Officer's Exhibit D. Will the clerk please so mark.

Let the record also show that a letter to Mr. F. Michael Ahern, Assistant Attorney General for the State of Connecticut, was sent on the 7th of May 1970, advising him of the College's compliance with the order of the U.S. District Judge to hold the hearing on this date. A copy of this letter is introduced into the record as Hearing Officer's Exhibit E. Will the clerk please so mark.

I would like to introduce for the people present those who are in attendance as a part of the Hearing Officer's staff, Mr. David Hayes, as Director of Security, who will be serving as the Hearing Officer's bailiff, Mr. Thomas Gurnsey, who is the technician for our recording, and Mrs. Anne Balciunas, who will be serving as the clerk for the hearing.

I would also like the record to show that a complete transcript of this hearing will be available upon request from me as Hearing Officer at the cost of $1 per page which is deemed by the College to be a reasonable cost for such preparation.

Attorney Silver, are you present?

ATTORNEY SILVER: I'm present and I would like to make some opening remarks, if I may.

DEAN JUDD: O.K. Would you please, before you go into that, would—let me clear the record for those who are in attendance at the present time. It is correct that you are going to represent the applicants in this case?

[3] ATTORNEY SILVER: That is right.

DEAN JUDD: I would like those who are now present as plaintiffs and applicants to identify themselves when so called by the Hearing Officer. Let's see, Catherine J. Healey?

CATHERINE HEALEY: Present.

DEAN JUDD: O.K. Let the record show that Miss Healey is present.

Peter Browne? Mr. Browne is not present. Let the record please show. Edward J. O'Neil? All right, let the record show that Mr. O'Neil is not present. Paul Brown?

PAUL BROWN: Present.

DEAN JUDD: Let the record show that Mr. Brown in present. Joel Blumert? Let the record show that Mr. Blumert is not present. Theodore Tester? Let the record show that Mr. Tester is not present. I also have listed, on a letter from Paul Brown, dated on the 17th of May the following individuals who are also not present. Mr. Haines Brown; and I think that is the extent of my list.

I would like to enter into the record as Hearing Officer's Exhibit F, said letter.

May I have the names of the other individuals present in the room?

PERSON: Joe Bernacchia.

DEAN JUDD: Would you repeat that again?

PERSON: Joe Bernacchia.

DEAN JUDD: Joe Bernacchia; would you please spell that Mr. Bernacchia?

PERSON: Joe B-e-r-n-a-c-c-h-i-a.

PERSON: Philip Sena.

PERSON: Robert Stavnezer—S-t-a-v-n-e-z-e-r.

PERSON: Jerome Ackerman—A-c-k-e-r-m-a-n

DEAN JUDD: Mr. Counselor, are any of these people being presented as witnesses for the applicants?

ATTORNEY SILVER: They are not.

DEAN JUDD: They are not. All right, gentlemen, I will have to rule from the chair that the hearing is closed except to those designated by this office or designated by the applicant or plaintiffs in the case. Now, I would therefore have to request [4] that you leave the premises.

Let the record show that those who have been advised that were not either as witnesses for the plaintiffs at their request, did leave and did leave peacefully.

Mr. Counsel, do you expect that there will be any witnesses that are listed here that are not going to be present? I'll show you the list that Mr. Brown submitted.

ATTORNEY SILVER: Well, whoever is here is here.

DEAN JUDD: O.K. Is there any—that should be Exhibit F—would or do you expect any others to come before that you would like to have here that are not here?

ATTORNEY SILVER: I have no knowledge.

DEAN JUDD: O.K. Do any of the applicants have knowledge of the other parties that you listed?

MISS HEALEY: The rest of them are not here.

DEAN JUDD: Well, in the event that you felt that these people should be here, I would certainly entertain any leeway to have them here, and if you do feel later that they are required to answer any questions, that you would have, certainly would to entertain such a motion.

O.K. The applicant in this case is hereby identified as CCSC Local Chapter of Students for a Democratic Society, also known as SDS. Is this correct, counselor?

ATTORNEY SILVER: Well, I have some remarks to make in that connection.

DEAN JUDD: Would you care not to answer that question at this time?

ATTORNEY SILVER: I would rather not answer because I have a statement which I think will be specific and will cover it.

DEAN JUDD: O.K. Let me ask my next question. Who is going to present the case for the applicants?

ATTORNEY SILVER: Well, as far as I'm concerned, I will make all the remarks that have to be made. I'm not foreclosing any one of my people from speaking, but as far as I'm concerned, I have no reasons for them to make any statements.

DEAN JUDD: Well, let the record show that Attorney Silver will present the case on behalf of the applicants, how-

ever, he is not waiving right to have presentations made by the applicants if they so desire.

Would you then please proceed, Attorney Silver?

[5] ATTORNEY SILVER: Yes, I'd like to make some inquiries about the device by which the record is being made. Now, there's an instrument that's in front of me here and, frankly, I don't know how this thing works. I don't even know whether my voice is being recorded, so with your permission, Dean Judd, I'd like to ask a couple of questions of the technician.

DEAN JUDD: All right.

ATTORNEY SILVER: Your name is Gurnsey?

MR. GURNSEY: Yes.

ATTORNEY SILVER: Mr. Gurnsey, how is this record being made?

MR. GURNSEY: It's being tape recorded.

ATTORNEY SILVER: It's being what?

MR. GURNSEY: Tape recorded.

ATTORNEY SILVER: Do you know that your answer is being recorded at the present time?

MR. GURNSEY: Yes.

ATTORNEY SILVER: You know that?

MR. GURNSEY: Yes.

ATTORNEY SILVER: How do you know that?

MR. GURNSEY: Because I could see the sound on the level meter. Right now, this is not picking me up too well. It's picking up you and Mr. Judd very well.

ATTORNEY SILVER: But you don't know whether your voice is actually getting picked up at this time, is that right?

MR. GURNSEY: Well, right now it's being picked up, yes. It depends on how loudly I speak.

ATTORNEY SILVER: If you don't speak loudly, then your voice may not be picked up? Is that right?

MR. GURNSEY: That's right.

ATTORNEY SILVER: If you speak a little softer, then you don't know if it's being recorded? Is that correct?

MR. GURNSEY: I wouldn't be positive.

ATTORNEY SILVER: Now, after this hearing is terminated—

MR. GURNSEY: Do you want this played back?

[6] DEAN JUDD: Let the chair interrupt for a minute. Mr. Gurnsey, would you please stop the recording and play back the last five feet?

All right. Would you now proceed, Attorney Silver.

ATTORNEY SILVER: May I continue questioning Mr. Gurnsey?

DEAN JUDD: Yes, would you please indicate for me your line of reasoning in questioning our technician?

ATTORNEY SILVER: Yes. The reason is that a record of this hearing was directed by the court.

DEAN JUDD: Correct.

ATTORNEY SILVER: And It's most important and I'm raising a question as to whether this is an appropriate manner in which to record this hearing. This is the purpose of my questioning. And I very frankly have great reservations as to its propriety, but ultimately perhaps the court will have to determine whether the proper way, so the court should know what this device is doing. So, may I just ask him a couple more questions?

DEAN JUDD: Please do.

ATTORNEY SILVER: All right. Now, when this hearing is over, I assume that this will be reduced to writing. Is that—

DEAN JUDD: He would not be aware of that. I can answer that question for you.

ATTORNEY SILVER: It will be reduced to writing?

DEAN JUDD: A complete verbal transcription will be made of that tape. The tape will be preserved. We will duplicate the tape so there will be a second set in the event of anything might happen to the first, and these will be made available to either you or the Federal judge or the Attorney General of the State.

ATTORNEY SILVER: Now, when this hearing is over, who will take the possession of the tape?

DEAN JUDD: I will take possession of the tapes.

ATTORNEY SILVER: You will take possession of the tapes, I see.

DEAN JUDD: Now, relative to your one point, as to the judge just indicated a record shall be made in his ruling. Since we are not in a legal proceeding of the type and do have a steno typist available or other such forms of recording the session, the College has used in the past used tape recordings to gather comments in other hearings on which we have conducted and have found it [7] to be a satisfactory vehicle.

ATTORNEY SILVER: Well, for the record, I'm objecting to the use of this device because this device cannot talk back and tell me when it doesn't hear me and I just don't think as a legal proceeding that is adequate. I have no doubt that it's a useful device and may be appropriate for some occasions, but I do object to its use in this particular case.

DEAN JUDD: Now, let me indicate the Hearing Officer is going to overrule your objection. I wish your objection to be so noted in the tape recorded recording of this. Let me also indicate I would overrule your point relative to a legal proceeding. This is not a legal proceeding. We are having an administrative hearing which does not have all the rudiments of a adversary proceeding. I note your objection and it'll be in the record for the court review.

ATTORNEY SILVER: I thank you. Now, I would like to note that Dr. James, who is the party who will ultimately be required to make the findings resulting from this hear-

ing, is not in attendance. Notwithstanding—I withdraw that word—he is not in attendance and I object to a hearing being held in which the person who makes the finding is not here to receive the evidence. I think that it is improper because for the reason that the person making the finding is not in a position adequately to evaluate evidence when he receives it simply from a written record, assuming that the record will be accurate. So, I would say that on behalf of my clients, that we will be willing to defer this hearing in order to give Dr. James an opportunity to conduct it himself as I claim it should be in order to be done properly.

DEAN JUDD: Are you raising—number one, you are raising objection to Dr. James' not being here. You are aware, Mr. Silver, that Judge Clarie indicated that Dr. James could either—he ordered Dr. James to conduct a hearing or someone designated by him in view of the fact the President of the College may not have the time to conduct such a hearing.

ATTORNEY SILVER: Yes, I'm aware of it. I read it in the memorandum notwithstanding, I take the position that the hearing is not properly conducted notwithstanding Judge Clarie's statement.

DEAN JUDD: All right. Well, I'll overrule that first objection since I've been duly designated and appointed as the Hearing Officer. It is my responsibility to conduct it until otherwise ordered. The second point, are you motioning for a delay in the hearing until your objection could be reviewed by anyone?

[8] ATTORNEY SILVER: No, I'm only making a point that we are in fact proceeding, if we do proceed, and I assume that we will on the basis of your remark. I just like to make it clear that we have not waived our claim and I take exception to your ruling notwithstanding Judge Clarie's remark in his memorandum that this hearing could be conducted by an agent, and I suggest that we would be willing to defer it to accommodate

President James if he saw fit to postpone it. This is my only point.

DEAN JUDD: Well, I think the postponement would be based upon whether you really want to enter a motion in at this time for such postponement until that question can be resolved.

ATTORNEY SILVER: Oh, I'll make the motion.

DEAN JUDD: All right. Let the record show that Attorney Silver has motioned that the hearing be delayed until such time as the President could respond to the question of him being present at this hearing.

I'm not sure exactly how I want to rule on that motion, since we're somewhat informal, I'd like to take a minute and think about that.

ATTORNEY SILVER: Well, take your time.

DEAN JUDD: Well, the Hearing Officer is going to overrule that motion and not entertain it at this time. Let the record show that I have so done and let the record also show Attorney Silver's comment relative to not waiving his right of his point therein made.

DEAN JUDD: Mr. Counsel, will you the proceed with plaintiff's case.

ATTORNEY SILVER: I have a statement that I'd like to read in the record. This statement has been signed by six of the plaintiffs. Those who have not signed it, didn't sign it only because we were not able to reach them, and the statement is as follows: "We, the undersigned, being the plaintiffs in the case of Catherine Healey et al. against F. Don James et al., make the following statement: We affirm the statement of purposes recited in the application submitted to the Student Personnel Committee. However, in view of the decision of Emmet T. Clarie, U.S. District Judge, in this case, dated April 24, 1970, there appears to be ambiguity concerning the structure of the organization referred to as "Local Chapter of Students for a Democratic Society." In order to remove all doubt, we hereby

affirm that the proposed organization shall be called Students for a Democratic Society of Central Connecticut State College, and it shall have no connection whatsoever to the structure of an existing national organization or organizations bearing the name Students for a Democratic [9] Society. Furthermore, the organization shall be unaffiliated with any other organization. We affirm our constitutional rights of freedom of speech and freedom of association. It is our expectation that in the exercise of our constitutional freedoms, that we may be affected in communicating and establishing greater understanding with students of all political persuasion from the left to the right. We claim we are entitled to the presumption of honorable and legal motives and intentions. We claim further that any inference that the undersigned have an illegal purpose, is unwarranted, discriminatory, and unconstitutional." Now, this statement is signed by Paul Peter Brown, Joel Blumert, Theodore Tester, Catherine Healey, Edward John O'Neil, and Peter David Browne, and I'd like to offer this statement as an exhibit to be part of this case.

DEAN JUDD: Let the record show that Attorney Silver has presented applicant's exhibit. Will the clerk please mark this Applicant's Exhibit No. 1.

Now, as I understand, that particular application—that statement you just read rather—you indicate that the organization is apparently motioning at this time not to be considered as a local chapter.

ATTORNEY SILVER: Wait a minute. I think that the statement speaks for itself. The statement indicates that there was ambiguity. Judge Clarie indicated that there was ambiguity. So, what we're doing is attempting insofar as possible, by language, to clarify it. As it states, the organization shall be called Students for a Democratic Society of Central Connecticut State College, and I repeat shall have no connection whatsoever to the structure of an existing national organization or organizations bearing the same name. Furthermore, the organization shall be unaffiliated, and I emphasize, unaffiliated with any other organization. So this is a clarification of the original application.

DEAN JUDD: Attorney Silver, let me comment that I'm not sure that it's within my prerogative to, as the Hearing Officer in the case, to determine whether or not we can consider the case aside from what was introduced into Judge Clarie's memorandum of decision and as petitioner's exhibit in that decision of Judge Clarie, it was stated the statement of purpose of "a local chapter of Students for a Democratic Society" which was received on the 3rd of October by me as the Executive Secretary of the Student Affairs Committee. Now, on that basis, I think I would have to rule that I could only consider the case this morning on the basis of what was introduced into the Federal record and I'm not sure exactly how I can [10] proceed at this point if we're to proceed on the basis of an amended application, which this appears to be in my opinion.

ATTORNEY SILVER: Well, you're going to make the ruling, obviously?

DEAN JUDD: Yes.

ATTORNEY SILVER: But, I think it's clear that the judge won't be seeking some clarification.

DEAN JUDD: Correct.

ATTORNEY SILVER: And this is what we seek to do. You may interpret it any way you like, but I don't think there's any room for doubt as to the intention of this statement. Intention of this statement is very clearly to state to Dr. James that this organization will be unaffiliated with any other organization.

DEAN JUDD: Well, these certainly are some of the questions which the College would entertain when it presents its own questions this morning, if we go to that point.

ATTORNEY SILVER: Yes.

DEAN JUDD: This is one of the ambiguities that was raised in Judge Clarie's memorandum; and it was also one of the questions which President James raised when he announced his action on the application.

ATTORNEY SILVER: Well, I don't seek how language can express a thought any clearer than as it's stated here that they are unaffiliated with any other organization.

DEAN JUDD: Well, I think this is something we would want to entertain questions at a later time to see if that point was clarified and whether the representations can in fact be made on that basis, if a name of an existing organization is being used by the applicant club, I think would be the point we would want to clarify.

Well, let me ask you again. Are you introducing this particular exhibit as an amended application for recognition?

ATTORNEY SILVER: If you want to treat it as an amendment, you may treat it as such. I regard it as a clarification.

DEAN JUDD: Well, I just have to repeat again that the only thing we have to go on at the present time is what was introduced into the record; what the College has received from the applicant club. This was the basis upon which Judge Clarie made his decision and, of course, this is basis upon which we're having this hearing.

[11] Would you care to comment?

ATTORNEY SILVER: Yes, let me point out something that Paul Brown just brought to my attention. That in a student's application they refer to CCSC Chapter of SDS in their petition.

DEAN JUDD: In the petition of the Federal court?

ATTORNEY SILVER: No, no, in their application to the Student Personnel Committee. In their declared purposes of the organization set out in their petition to the Student Personnel Committee in which they requested official recognition. They identified themselves as the CCSC Chapter of SDS. Now, it is Dr. James in his comment—

DEAN JUDD: Counselor, would you please clarify from what you're reading there?

ATTORNEY SILVER: I'm reading from Judge Clarie's memorandum of decision on page 2, and the lower part of the page, paragraph 3.

DEAN JUDD: I have that; I see it.

ATTORNEY SILVER: —where, which indicates that the students referred to purposes of the CCSC Chapter of SDS. Now, on the next page, page 3, the Judge quotes Dr. James, "I am disapproving recognition of a local chapter of Students for Democratic Society." So, it's Dr. James who injected the word local chapter.

DEAN JUDD: Well, the chair objects to that reference and I would like to call Counsel's attention to the fact that on the stipulation of the facts agreed upon, by yourself and the Attorney—Assistant Attorney General, the application which was initially introduced into the original petition was incorrect and you will recall that introduced in at that time, was the following statement which was received by this office on the 3rd of October 1969. I will quote from it. "What follows is a brief statement of purpose of the group of students at CCSC who would like to form a local chapter of Students for Democratic Society (SDS)."

I would like to introduce this into the record as Hearing Officer's Exhibit L. Would you please so mark and then I would like Attorney Silver to look at that document which I think you're familiar with. I think the use of terms that President James used in his statement is exactly from this Exhibit L.

ATTORNEY SILVER: O.K. That's right.

DEAN JUDD: Well, then again I would have to request you, Attorney Silver, to respond to my original question. On your statement which you have introduced into the record as Applicant's Exhibit No. 1, are you considering [12] this at the present time as an amended application for recognition?

ATTORNEY SILVER: Dean Judd, I would hope that this hearing will not turn on technicalities. I would hope that we would get to the substance of what we are trying to do here. Now, the substance as I see is to determine whether this group of students are affiliated with any other organization or not. If you want to get into the technicalities of whether it's an amendment or something new, of course, this is your privilege, but I'd like you to know that on behalf of the students, we're not interested in technicalities, we're interested in attaining the recognition of an organization which bears this name and we make clear, I don't know how we can make it any clearer that it will be unaffiliated with any other organization. Now, I don't think that there's anything further that I have to say.

DEAN JUDD: Well, I think relative to your comment, Attorney Silver, I think the College needs both to be concerned with the technicalities and the substance of the request since either one of these or both of them may be involved in the recognition process. I think technically, not to whether this is an amendment or not, I think technically as to what the nature of the affiliation is, what the nature of the organization that is before the College for recognition is, is important at this point. The same point would be raised with any other organization who applied that would bear the name of an organization which would be supra to it.

ATTORNEY SILVER: Well, may I ask you to frame your question again and I'll answer it as specifically as I can.

DEAN JUDD: All right. Well, the question reframed again is, is the exhibit that you have introduced as Applicant's Exhibit No. 1 to be considered by this hearing as an amended application for recognition of the applicant group?

ATTORNEY SILVER: It may be an answer, it may be regarded as an amended name of the organization. The organization students on its original statements—statement of purposes. There is no change in the statement of

purposes. The name is changed and the attempt is to clarify the ambiguity that was found by Judge Clarie.

DEAN JUDD: Well, Attorney Silver, I think I would have to rule as the Hearing Officer if the name is so changed and this in fact would constitute a change of procedure from what was ordered by the Federal Judge which heard the case on the basis of what was presented in record to him, and I would then therefore rule that this constitutes a change in application.

[13] ATTORNEY SILVER: It seems to me that this is something that Dr. James will have to decide. You indicated that your acting as a Hearing Officer in his behalf so, I don't think your conclusion really is appropriate, is it, when you stop to think of it? Isn't Dr. James who's going to have to make that decision?

DEAN JUDD: Well, I think the decision has to be made on the basis of what we have introduced as fact and what is fact is what has been agreed upon by Counsel before the Judge and on the basis of what Judge Clarie handed down to his decision. I think this is the only thing I can go on in hearing this case, and I think I would have to say that at this point I want to request a clarification from our Counsel in this case before I should proceed further. Again, I will want to respect the right of the organization to be fully represented and to have their case fully stated, and I don't want to be arbitrary or capricious in ruling on this matter before I have a chance to discuss it with our own Counsel. Therefore, before proceeding, I'm going to adjourn the hearing until 10:00 tomorrow morning.

ATTORNEY SILVER: Just a minute. I don't know that I'll be available at 10:00 tomorrow morning. Now, you assigned this hearing today for 10:00 and I'm here, but I don't think—I may be available, but I doubt it—but I don't think its appropriate that you should just arbitrarily set a time for 10:00 o'clock tomorrow morning.

DEAN JUDD: Attorney Silver, your comment is well taken. Let me indicate that on appropriate notice to you,

and then I would assume you will inform your clients. Perhaps even it may be the case that I get this answer cleared before even adjourning at the present time. Now, would you be–

ATTORNEY SILVER: May I suggest this. We're here, we've allocated time for this hearing, you may have some legal questions which I can understand, but is there any reason why we can't continue any how? As far as I'm concerned we have nothing further to say. I've made my remarks, we submitted our statement, and personally, I don't think that there's anything to be said.

DEAN JUDD: I think that's well taken. Let the Hearing Officer rescind his previous motion to adjourn. I would like it noted for the record that I do not waive my previous right to have this question clarified and that this question when clarified may require that those who are here today return at a mutually convenient time to both parties. So, let the record so note.

If the applicants in the case have nothing further to say, then the College would like to raise some [14] questions of its own.

I think Counsel and applicants will have to understand that my questions are phrased and directed on the basis of what was before us at the time and while I recognize you may object to these, I will entertain that objections as they come.

ATTORNEY SILVER: Dean Judd, before you proceed, may I have one question clarified?

DEAN JUDD: If I can, yes, please go ahead.

ATTORNEY SILVER: For the record, have any of the plaintiffs in this case been ordered to be in attendance here today?

DEAN JUDD: They were not ordered. I think, would you please–

ATTORNEY SILVER: Well, I agree with you; I just wanted a record of it.

DEAN JUDD: The Exhibit B—Hearing Officer's Exhibit B—reads "Notice is served that a hearing is scheduled—If you intend to be present, written notice of such, etc. etc.

ATTORNEY SILVER: Yes, just so there's no misunderstanding, anyone who is here is here voluntarily. They were not directed to be here by your office or anybody else.

DEAN JUDD: That is agreed, and let it so state in the record. I would like also to indicate from Judge Clarie's decision, Hearing Officer's Exhibit A, page 14, where Judge Clarie states: "A hearing is hereby ordered to be held upon reasonable notice to the parties which shall be conducted by President James or Hearings Officer duly designated by him and acting in his stead. All the plaintiffs in this action shall be afforded an opportunity to be heard and shall be entitled to cross examine witnesses;"

ATTORNEY SILVER: I just want the record to be clear that they were not directed to be here. They're here voluntarily.

DEAN JUDD: Absolutely, yes, absolutely. I think that was—in your opinion—was that clear from my letter to all the applicants?

ATTORNEY SILVER: They had that impression, but I just wanted it to be clear.

DEAN JUDD: Well, I would like it not to be an impression. Counsel, would you please ask the applicants present if this was their understanding?

[15] FEMALE VOICE: Yes.

MALE VOICE: Yes.

DEAN JUDD: Mr. Brown is responding yes, and Miss Healey is responding yes. Let the record please so note.

Well, then I would like to proceed with the questions that the College has in this case. I would like to introduce as Hearing Officer's Exhibit G, the following document: "Investigations of Students for Democratic Society, part 6B. Hearings before the Committee on Internal Security, House

of Representatives, 91st Congress, first session, October 28-30, 1969. This is printed by the United States Government Printing Office and is labeled as Document 30-1330. Would you please mark that as Exhibit G, and I will–

ATTORNEY SILVER: May I suggest, Dean Judd, that before these exhibits are–become a part of the record that you let me look at them so that I will have an opportunity to raise an objection, if I have any objection. Is that all right with you?

DEAN JUDD: I'm going to–

ATTORNEY SILVER: I'm not suggesting that you will necessarily abide by my objections but,–

DEAN JUDD: I will rule initially that they will be entered into the record as Hearing Officer's exhibit. I will then, of course, afford you the opportunity to look through these and I might add Attorney Silver that if you feel you would like appropriate time to review these before I ask questions from them, I would certainly entertain that motion and give you that opportunity.

ATTORNEY SILVER: No, if I could just look at it for a moment.

DEAN JUDD: I was going to refer some questions from it.

ATTORNEY SILVER: I would like to make–apparently, you have made it a part of the record, but I would like to make an objection very clear that this exhibit that was offered and introduced by you is entirely irrelevant to this hearing. We have made very clear that this group of students are applying for an organization which is a local organization and has no connection whatsoever with any other organization. And for you to introduce in evidence anything pertaining to any other organization is totally irrelevant and I strongly disapprove of your doing so.

DEAN JUDD: Well, okay, I overrule that objection and let the objection be so noted in the record and I would

let the objection be so noted in the record and I would [16] like to comment again to rephrase my earlier comment that since the applicant organization is listed as a local chapter notwithstanding your petitioner's Exhibit 1 and until such time as I can have clarified my legal question on that matter, I am going to have–I would proceed–

ATTORNEY SILVER: But you do recognize that there is a statement offered by these students that they're not affiliated with any other organization–

DEAN JUDD: I recognize that that statement has been entered but I care not to rule on that statement until I can have it clarified by the State's Attorney General's office.

ATTORNEY SILVER: You see fit to ignore it for purposes of this hearing?

DEAN JUDD: Well, as I indicated previously, I see fit not to acknowledge it as a matter for discussion in this case since the only basis upon which the College can conduct the hearing is on what Judge Clarie ordered, this hearing is based upon an application, as previously noted and introduced as Exhibit L, Hearing Officer's Exhibit L, and this is what is before us. Now again, I think I would need to say, Mr. Silver, if this–if you feel that this is such a serious question before I proceed, perhaps this should be resolved so that we can go ahead with a clear frame of reference on it.

ATTORNEY SILVER: Well, I think you ought to resolve it because I think it's highly improper. I think it's tremendously improper when people make a statement that they're not connected with another organization and you proceed with evidence connected with another organization, I just don't follow the logic, I don't see the reason, I just don't understand it.

DEAN JUDD: The Hearing Officer might respond in kind to your statement.

ATTORNEY SILVER: How's that?

DEAN JUDD: Well, I don't see the logic in your presentation on the same basis because we have before us a document of the Federal court which clearly identifies the petitioner's exhibits that were agreed upon by Counsel. You agreed on those stipulations in the presence of our attorney.

ATTORNEY SILVER: Yes, but Judge Clarie–

DEAN JUDD: [17] And this is what the Judge ruled on?

ATTORNEY SILVER: Judge Clarie asked for a clarification; the Judge said there's ambiguity, and we're present here to clear up the ambiguities; now we cleared up the ambiguity; we are not a local chapter. We are not a local chapter of SDS, we're not connected with any national organization, we're unaffiliated and to go back to anything behind that's far as I am concerned is beating a dead horse.

DEAN JUDD: Well, your comments are so noted but I don't think I can rule on it, under the present document that we have before us. Now let me ask again. Do you want the Chair to entertain a motion to adjourn the hearing until this question can be resolved?

ATTORNEY SILVER: This is your hearing.

DEAN JUDD: That's correct.

ATTORNEY SILVER: You called this hearing. All I'm here to do is object to what I think is highly improper, and this is what I do.

DEAN JUDD: Well, in that case, Attorney Silver, I have noted your objections. I have acted on them and I'm going to proceed according to the plan that I introduced.

I did introduce into the record Hearing Officer's Exhibit B and identified it and I would like to pose this question: Attorney Silver, on pages 2170 and 2171 you will see membership cards which are detailed on those two pages. One of these indicates blanks for chapter records and one indicates a blank for national records. Now, I would like

to ask in regard to that, would you care to comment on the nature of those membership cards and what bearing they would have on the local chapter's application?

ATTORNEY SILVER: I think they have absolutely no bearing. None whatsoever. A person can belong to any organization he wants to in the United States. I don't know of any organization to which it's illegal to belong. But the fact remains, one can belong to an organization entitled "Students for Democratic Society of Central Connecticut State College" and I think that membership in any other organization is irrelevant. The only thing that we're concerned about here as I see it is the purpose of this organization and its purposes are stated—they're set forth. Now, what any [18] individual member may believe, as a matter of fact, and maybe I'm anticipating—

DEAN JUDD: I don't think we're questioning beliefs—

ATTORNEY SILVER: Maybe we're anticipating whatever they believe, or whatever organization they may belong to is entirely irrelevant. As far as I'm concerned, I wouldn't care if Barbara Healey was a member of the Communist Party. It would have nothing to do with the subject matter of this hearing.

DEAN JUDD: I think the College's point in raising this question, Attorney Silver, is that there is definitely the existence of a national organization which is detailed in that document as well as in others. It does indicate that there are local and national membership cards and the College feels that if the organization is going to be known by a name which is used by another organization which has been duly constituted th- we have a right to know the affiliation that is intended here.

ATTORNEY SILVER: Affiliation of whom?

DEAN JUDD: Well, the application presented by the students indicated they would be a local chapter of Students for Democratic Society at Central Connecticut State College and again, recognizing your previous objection to

that, we would still have to proceed on the basis of the original application.

I would also like to continue to use Exhibit G at the present time, and I would like to know if the applicants are familiar with the national constitution of Students for a Democratic Society?

ATTORNEY SILVER: Well, I think the question is improper. I think its immaterial; I think its got nothing to do with this case; It has no bearing whatsoever. We're not interested in the national organization of SDS. We're not interested in any organization. The only organization we're here to talk about is the organization stated here–Students for Democratic Society of Central Connecticut State College. The constitution of any other organization is entirely irrelevant.

DEAN JUDD: Well, the Chair notes that comment but overrules it and I would direct–Counsel that you be referred to page 2107 of Hearing Officer's Exhibit G which denotes the constitution of the national organization and which shows various amendments to that document as approved by a national convention. [19] I would like you to refer if you hold onto this to Article 3 of that document which has a statement regarding chapters and affiliates. Would you care to respond to Article 3 of that document?

ATTORNEY SILVER: No, I'm not going to respond to it because I think it is irrelevant to the purposes of this hearing. It's got nothing to do with it.

DEAN JUDD: Would you care–

ATTORNEY SILVER: You might just as well present us with the constitution of the Klu Klux Klan, as far as I'm concerned, it has as much relevance.

DEAN JUDD: All right, would you just hold on to that until we are finished with it. I would like to ask the next question. How would such a constitution affect the applying organization?

ATTORNEY SILVER: I'm not going to answer that because I think there's nothing that any other organization can do or will do that has any relevance to this case. We stated very clearly that we're not connected to any other organization so it has no bearing whatsoever.

DEAN JUDD: All right, let the record so show Attorney Silver's comment to that question.

O.K., may we have that back please? Thank you. Hearing Officer would like to introduce into the record as Hearing Officer's Exhibit H–Investigations of Students for a Democratic Society, Part 1A–Hearings before Committee of Internal Security, House of Representatives, 91st Session of Congress, June 3-4, 1969. This is a GOP publication listed as 30-133.

I would like Counsel to look at page 5 of this document which indicates a claim to certain number of members and certain number of local chapters with national offices being located at 1608 W. Madison Street, Chicago, Illinois. There is also reference drawn there to "New Left Notes" as being the official publication of Students for a Democratic Society. I would like to ask Counsel if he is familiar with the publication as well as with the existance of the national office?

ATTORNEY SILVER: I am not familiar and I'm not interested in responding because your question is completely irrelevant to the purpose of this hearing. I am not interested in anything that a national organization stands for.

[20] DEAN JUDD: O.K., Attorney Silver's comment on the irrelevance of that data is noted but overruled.

This is Hearing Officer's Exhibit H. Hearing Officer introduces as Hearing Officer's exhibit H, investigations of Students for a Democratic Society, Part 1-B, Hearings before the Committee on Internal Security, House of Representatives, 91st Congress, 1st edition, June 5 & 17, 1969, GPO publication listed as 30-133.

Counsel, on page 434, while I respect exactly what you are going to say again, I do want to introduce these for the record. There is a ad appearing in that document from Students for a Democratic Society to subscribe to New Left Notes. Such notice reports the price for subscription to New Left Notes, which is elsewhere described and has been noted in this hearing as the national publication of said Students for Democratic Society, as well as a $4 price tag for the dues. How do the applicants in this case see a national publication related to local chapter activities?

ATTORNEY SILVER: Well, I object again. It's totally irrelevant.

DEAN JUDD: All right, objection is noted for the record but overruled.

ATTORNEY SILVER: For the same reasons that I've stated over and over again?

DEAN JUDD: Please let the record also show that Attorney Silver's objections are as previously noted for the other documents introduced on the investigation for Students for a Democratic Society.

I suppose a—well, at this time Attorney Silver, on the basis of your objection, which although have been overruled and introduced, I think it is rather futile for me to continue in this line of questioning and I, therefore, am going to adjourn the hearing at this time subject to resolving the earlier question which we raised to be clarified so that we can conduct the hearing and get to the, as you indicated, the substantial facts of the document which you introduced as Applicant's Exhibit No. 1.

So, let the record show that the Hearing Officer is adjourning the hearing at 10:55 a.m., subject to recall upon due notice and upon the mutual convenience of the parties involved.

I would like to personally thank you for being here Attorney Silver, thank Miss Healey, and Mr. Brown. I think they certainly acted commendably in the case, and I

would like that to be noted for the record as well, since the Judge indicated that we should be here in all civility and I would like to thank them [21] responding in kind to that request. The hearing is now adjourned.

[22] DEAN JUDD: This hearing is now officially reconvened and called to order on this date of 25 May 1970, at 10:00 a.m., in Room 207 of the College Administration Building by Hearing Officer Richard L. Judd. This session is a continuation of the hearing which convened on the 19th of May 1970, at 10:01 a.m. as adjourned by the Hearing Officer at 10:55 a.m. subject to a date and time which we agreed upon by Counsel for the applicants, Attorney Abraham Silver and the Hearing Officer.

Let it be noted in the record the same rules and procedures are in effect regarding the persons who may be present.

The Hearing Officer introduces for the record those present on his staff for this hearing: Mr. David Hayes, Director of Security, serving as the Hearing Officer's bailiff, Mrs. Anne Balciunas, our clerk for the hearing, and Mr. Thomas Gurnsey, our recording technician.

Mr. Gurnsey, would you please play back the last several feet of the tape to assure that the recording is being made? Okay, let the record show that such test was made and was heard. Thank you.

For the record, Attorney Silver, would you indicate your presence?

ATTORNEY SILVER: Yeah, I'm here—Abraham Silver.

DEAN JUDD: Let the record show Mr. Silver's comment. For the record, Counselor, would you indicate your clients present this morning?

ATTORNEY SILVER: My clients—none of my clients are present.

DEAN JUDD: All right. Would you clarify the presence of Dr. Brown, please?

DR. BROWN: Well, perhaps I should do that..

DEAN JUDD: Well, let me ask your counselor.

DR. BROWN: He's not my counselor.

DEAN JUDD: Well, let me indicate Dr. Brown you were listed on the request from Mr. Brown as one of the witnesses in this case, is that true?

DR. BROWN: Yes.

DEAN JUDD: All right. You are Dr. Haines Brown?

DR. BROWN: Right.

DEAN JUDD: And you are a member of the faculty at Central Connecticut [23] State College. Counselor, do you have any comments relative to his presence?

ATTORNEY SILVER: Oh, I'm glad to have him here.

DEAN JUDD: And he's here with your approval?

ATTORNEY SILVER: Certainly.

DEAN JUDD: Very fine.

ATTORNEY SILVER: As far as I'm concerned, anybody can be present.

DEAN JUDD: All right. Let the record show that on the date of 20 May 1970, be telecon, Attorney Silver it was agreed that the hearing would be resumed on this date and time and that Attorney Silver waived notice of such hearing. The Hearing Officer exercised his prerogative, however, to communicate this information by letter to the applicants and counsel. The following were informed on 20 May 1970, by special delivery certified receipt requested mail: Catherine J. Healey, James Vincent Carey, Edward John O'Neil and Paul Peter Brown, Theodore Robert Tester, Joseph A. Knowles, Lawrence Stub, and Peter Browne.

The Hearing Officer enters into the record as Hearing Officer's Exhibit K and M, copies of said letters. Is there objection to these being entered?

ATTORNEY SILVER: No.

DEAN JUDD: None appearing they are so entered; would the Clerk please so mark those as Exhibits K and M.

The Hearing Officer reaffirms his previous statements and rulings, specifically those regarding Applicant's Exhibit No. 1 to the effect that this hearing is and will proceed on the basis of what was introduced in the Federal record and eventually ruled upon by U.S. District Judge T. Emmet Clarie. Such memorandum of decision has been duly entered into this record as Hearing Officer's Exhibit A.

Those who just entered the room, may we please have your identification?

PERSON: Philip Sena.

DEAN JUDD: Philip Sena. Mr. Sena you are here at the request of—Mr. Sena is here at the request of Miss Healey, and you are here in the capacity of—

MR. SENA: As a witness.

DEAN JUDD: As a witness. All right, counselor?

[24] ATTORNEY SILVER: I'm happy to see anyone who wants to come here.

DEAN JUDD: And Miss Healey, would you please acknowledge your presence?

PERSON: Catherine Healey.

DEAN JUDD: Catherine J. Healey is acknowledged as present.

Okay, let the record show also that on Thursday, 21 May 1970, in a telecon between the Hearing Officer and Attorney Silver, and upon counsel's request, it was agreed that President James would be called in this hearing as a witness in behalf of the counsel's clients. The Hearing Officer would would like it noted, however, in the record that he considers the presence of Dr. James to be a highly unusual request of counsel. I say unusual because to have someone act as a witness at a hearing who will later be required to function in a quasi-judicial capacity, so to speak in the same manner. The Hearing Officer notes for the

record that such request was allowed because of the request of counsel for the clients.

And Dr. James, would you acknowledge your presence for the record?

DR. JAMES: Yes, Don James.

DEAN JUDD: And your capacity?

DR. JAMES: President, Central Connecticut State College.

DEAN JUDD: Very fine. Let the record please show that information. I also wish to make clear before proceeding that all questions directed to Dr. James will be addressed to the Hearing Officer first in order that their propriety may be ruled upon before being answered by the witness. Furthermore, Hearing Officer notes for the record that he has requested Dr. James to be here; the request of Dr. James has interrupted a previously scheduled budget meeting which is now in progress and is being held open until he returns. I would also like to make clear that Hearing Officer's interrupting his previous line of questioning which commenced on the 19th of May, in order that Dr. James could be questioned and then excused inasmuch as his schedule is extremely heavy today. However, when Dr. James is excused, Hearing Officer will resume his previous line of questioning. Counselor, would you please proceed?

ATTORNEY SILVER: Now, I just want to make an observation that I don't think it's highly irregular to have Dr. James here. I think this is an unusual proceeding. I think it's a rare occasion when the president of a college is a defendant in a law suit and, the decision indicates [25] that there was a question of due process involved here and the Court found that there was a departure from due process. I don't think it is an unusual situation and I don't think it—it should be considered such that students who have felt sufficiently aggrieved to retain counsel and to go to court, under those circumstances I don't think it's so

highly unusual that the President should give a few minutes of his time, under the circumstances, when students would like to communicate with him, through their attorney and I appreciate the fact that Dr. James has a heavy schedule and I assure you that I'm not going to take anymore time than absolutely necessary. I really have only a few questions, but I'm not apologizing for doing so.

DEAN JUDD: You're not objecting to my statement, however, are you?

ATTORNEY SILVER: Well, I just don't think it was appropriate. That's my point. I'm not making any formal objection. I just don't think that your remark was appropriate under the circumstances.

DEAN JUDD: Let it be so noted.

ATTORNEY SILVER: Now, Dr. James, when you made your decision to disapprove of this proposed organization, my question to you is, whether you at that time disapproved of the written statement of purposes that were submitted for your approval?

DEAN JUDD: Counselor, would you repeat your question once more for the chair?

ATTORNEY SILVER: Well.

DEAN JUDD: Let me rephrase it.

ATTORNEY SILVER: Well, then let the record—let the recorder read that—phrase that.

DEAN JUDD: All right. Would you please play back this question? I'm going to rule that question—is that picking up—I'm going to rule that question improper. I don't believe the question is intended to clarify the ambiguity which was requested by the Federal Judge.

ATTORNEY SILVER: Well, Mr. Judd, I understood this to be an informal proceeding and I think as a preliminary question, it's appropriate and I just don't understand why you should disapprove of it. It's preliminary to what I'm leading to and I certainly don't see any harm to it.

DEAN JUDD: I wonder, counselor, it does go into something which is already a matter of record. It goes into what the [26] Court has ruled upon. Judge Clarie indicated in his decision that this hearing should be held in order to clarify ambiguity in the application, not as to why Dr. James ruled as he did.

ATTORNEY SILVER: I'm interested in determining Dr. James' thinking at that time, at this time, and I'd like to know what—and certainly I think his thinking has some application, has some relevance as to the—whether his decision is a proper one or not.

DEAN JUDD: Well, that is up to the Court to determine and I rule that the question is improper and will not allow it, Attorney Silver. Do you wish to object to that?

ATTORNEY SILVER: Oh, I certainly do.

DEAN JUDD: Objection is noted but is overruled; it will appear in the record.

ATTORNEY SILVER: All right.

DEAN JUDD: Would you please proceed?

ATTORNEY SILVER: Dr. James, you—I withdraw that. Have you already decided this case?

DEAN JUDD: Attorney Silver, I rule that question is improper and is going into a statement of after the fact which has not yet been determined.

ATTORNEY SILVER: Dr. James as I understand it, you are charged with the responsibility of at this time—not at this minute, but following this hearing—to make a decision whether you approve or disapprove of the organization which is the subject of this hearing. I'm asking you if you have already decided—

DEAN JUDD: I object.

ATTORNEY SILVER: Can I finish the question?

DEAN JUDD: You have already rephrased that question. I've already ruled once on it. You're asking him to give

you an opinion before he reviews the record. The question is improper and I please request counsel not to continue in that line of questioning.

ATTORNEY SILVER: Well, I don't think you're helping your cause by cutting me off this way.

DEAN JUDD: Would you want to repeat it again?

ATTORNEY SILVER: Let the record—if you would please.

DEAN JUDD: All right. Let the record—Attorney Silver, do still want that question answered?

ATTORNEY SILVER: I certainly do, now.

[27] DEAN JUDD: The Hearing Officer rules it's an improper line of questioning and I rule it out of order. Let me indicate, Attorney Silver, that I think you're familiar with the memorandum of decision. The reason that this hearing has been called, as you indicated, is to provide due process and upon the record of this hearing, Dr. James would give his decision. We are gathering information so that the ambiguities which were patent in the application could be cleared, but to go into the reasons that Dr. James acted, is an improper line of questioning.

ATTORNEY SILVER: Well, I think it's the proper question for me to inquire as his state of mind at this time, and I'm going to ask him another question, and more questions and if you insist on overruling and keeping them out, this is your prerogative, but I assure you that there isn't—well, I assure you of nothing at this point.

DEAN JUDD: Please continue.

ATTORNEY SILVER: Dr. James, you addressed the the Lions Club last week, did you not? I can't ask him a question directly? I've got to talk to you?

DEAN JUDD: Dr. James you may answer that question.

DR. JAMES: Yes, I did.

ATTORNEY SILVER: Now, in your remarks to the Lions Club, it was reported that you stated that SDS is rejected on this campus. Did that—as of the date of those remarks, did you consider SDS rejected on the campus?

DEAN JUDD: Dr. James, I will instruct you not to answer that question; I rule it out of order. That is not relevant to this hearing.

ATTORNEY SILVER: Now, the reason I asked that question is that I'm trying to determine whether or not Dr. James has already decided it. Now, the purpose of this hearing, in order to satisfy due process, is to provide Dr. James with all the information that he may need in order to form a judgment. Now, it seems to me that it's appropriate for me to determine whether the person who's going to make the decision has already made up his mind or not on the question.

DEAN JUDD: Counselor, I'm ruling that it is irrelevant and immaterial for the purpose of the hearing, and I will not allow the question. Are you objecting?

ATTORNEY SILVER: Oh, I object very vigorously.

DEAN JUDD: The objection is noted but overruled.

[28] ATTORNEY SILVER: And I object to it especially since this is a quasi-judicial hearing where great latitude is permitted in the questioning and I think it's—I think it's grossly inappropriate for you to cut me off in this manner.

DEAN JUDD: I'm not cutting you off, Attorney Silver. Your questions have been read in the record. I've acted upon them in my opinion as Hearing Officer. This will be for the Court to review when it deems it proper.

ATTORNEY SILVER: Well, Dr. James, have you seen the statement that the students signed and submitted in this case at our last hearing?

DEAN JUDD: Attorney Silver, those are still within the Hearing Officer's records; they have not been reviewed by anyone.

ATTORNEY SILVER: Well, can he answer my question?

DEAN JUDD: No, because I'm giving you the answer.

ATTORNEY SILVER: You're not gonna let him answer that question?

DEAN JUDD: No, I won't. I've told you I've already given you my opinion. I have the record, it has not been shared with anyone.

ATTORNEY SILVER: May I have that beginning, please?

DEAN JUDD: Yes, you may.

ATTORNEY SILVER: This is really terrific.

DEAN JUDD: I'm handing to Attorney Silver Applicant's Exhibit No. 1.

ATTORNEY SILVER: Dr. James, I'm asking you to look at this—it's a page and a third—would you please read it. I'd like to ask you a question in connection with it.

DEAN JUDD: You have permission to read the document.

DR. JAMES: I've read the document, Mr. Judd.

DEAN JUDD: All right, would you proceed counsel?

ATTORNEY SILVER: Yes. This statement, Dr. James, states I quote, "in order to remove all doubt we hereby affirm that the proposed organization shall be called Students for a Democratic Society of Central Connecticut State College, and it shall have no connection whatsoever to the structure of an existing national organization or organizations bearing the name Students for a Democratic Society. Furthermore, the organization shall be unaffiliated with any other organization."

Now, you're seeing this for the first time I assume?

[29] DR. JAMES: This particular document?

ATTORNEY SILVER: Yes.

DR. JAMES: Yes.

ATTORNEY SILVER: Now, does that statement help you in making a judgment? The statement specifically that

the organization will be unaffiliated with any other organization.

DEAN JUDD: Counselor, I'll re-rule as I did earlier that that Applicant's Exhibit No. 1 is not germane to this hearing; it was not part of the Federal record; I overruled it before, entered it into the record, and I am now motioning and deny him to answer that question. It is not germane to this hearing.

ATTORNEY SILVER: Well, let me just make the comment that I think it's most germane. The judge indicated that there was some ambiguity with respect to the identification of this organization with some other organization. He indicated that apparently there was some confusion and certainly some reasonable basis for your reaching the conclusion that you did, so far as identification of this group with another organization. But the judge said it was ambiguous. He didn't take the strong position that in fact—that it was associated.

Now, my question to you Dr. James is: In view of the clarification, and I treat this statement as purely a clarification of the intentions; this is offered for the purpose of clarifying the ambiguity that was recognized by the judge. My question again is, does it help you in determining whether or not in fact the proposed organization is affiliated with any other organization?

DEAN JUDD: Counselor, you will recall from our hearing of last Tuesday that I raised this question to you, at the time; were you considering this as an amended application? You so motioned; I denied that motion subject to a clarification from our counsel. I am now giving you that clarification from our counsel. This is considered as an amended application. I'm ruling it out of order. I'm ruling it as not germane; it was not introduced in the Federal record. Dr. James' decision on this case will be based on what has been introduced into this hearing on the original application of the CCSC students for a local chapter of SDS, which was introduced as Hearing Officer's Exhibit L.

It was introduced in the Federal record, you agreed to it; it was stipulated. Therefore, I repeat again that this will not be considered as part of this hearing.

[30] ATTORNEY SILVER: And I repeat again that the purpose of this hearing as I understood it was to clarify an ambiguity. I thought this was one of the issues to clarify an ambiguity, and I insist that if you cut me off and do not permit me to clarify that ambiguity by showing the intentions of these students that you are not practicing due process at this hearing.

DEAN JUDD: That is your opinion, and you're welcome to it. My ruling still is the same. Do you have further questions of Dr. James?

ATTORNEY SILVER: Dr. James, do you intend to any evidence in which the creditability of any of these students is under attack?

DEAN JUDD: Are you asking it as a witness for your clients in this case, counselor? I think it's an improper line of questioning.

ATTORNEY SILVER: All right, now look. The person who is going to make the determination here is Dr. James. You are simply his agent. I thought from the beginning it was highly improper.

DEAN JUDD: You noted that and I ruled—

ATTORNEY SILVER: Yes, and I say it again; but assuming that Dr. James is very busy, I hadn't intended to take more than five minutes of his time. I spent more time arguing over your objections than over the questions that I intended to ask him. The fact is he's here and he's the one that's going to have to make the decision. Now—

DEAN JUDD: The fact is that he's here as your witness. I consider that an improper line of questioning for a client's witness.

ATTORNEY SILVER: Well, he's my witness and he's also the person who's going to make the decision in a

quasi-judicial proceeding—an administrative proceeding, which I understand is an informal type of proceeding. So, I ask the question again. Is he going to—let me change that question. Is he questioning the creditability of these witnesses?

DEAN JUDD: I don't think that's a proper line of questioning—answers to give you, Attorney Silver. He is not here to question the defendants in this case. The Hearing Officer is.

ATTORNEY SILVER: Well, he is the person who is going to make the decision. Now, you have here some documents, you've got a written statement, and I'd like to know whether he has any reason to question the creditability of the people who have made the statement?

[31] DEAN JUDD: Which statement, Attorney Silver?

ATTORNEY SILVER: The statement—

DEAN JUDD: I've ruled that not admissible as germane to this hearing. It's introduced into the record and the Court will have access to it and I've ruled it is not permitted. Do you have any further questions you wish to raise to Dr. James?

ATTORNEY SILVER: Well, you're wearing me down, I'll tell you that. Well, I think I'm wasting my time, but I'm going to get something into the record anyhow. I'm very disappointed—I'm extremely disappointed. I have given a great deal of my time; I'm representing your students here. I've done this and I think that I've achieved something. I've done it without any compensation and I just don't think that I have received the consideration that reasonably should be received. Now, if there are any questions that I asked which are objectionable, and in fact they went into the record, what harm would they do? Dr. James is certainly a mature person. He would be competent to ignore the questions. I just don't understand why you're so technical.

DEAN JUDD: We're in a meeting, counselor, in which the technicalities and the substance involved, may be

involved in the determination. I wish to make it abundantly clear that as the Hearing Officer I'm going to conduct this in an efficient manner so that there will be no question in the eyes of the Court, or anyone else, that this was a hearing which afforded due process which afforded you to answer the questions—to raise a question rather, upon what the Federal judge ordered. And the Federal judge made it very clear what the purpose of this hearing was to be. Now, if the Court cares to take me to task for the rulings I've made, they're at liberty to do so; but these will be in the record. I'm only acting in as honest a capacity as I can as a Hearing Officer, and while I respect your disappointment, Attorney Silver, you are certainly aware of how these proceedings go on in a court of law—they're on facts, they're not on opinions, they're not as hearsay, they're not asked to make people give answers to questions which are going to be after the fact, before the time comes when he sees the record, and I think you would understand that.

ATTORNEY SILVER: Well, I do understand it and I think I understand it better than you understand it. I think you're missing the whole point of this thing. Now, as I understand it, and let me clarify what I understand, and let's see if you really understand what's going on here. A decision was made by President James, and the Judge decided—reversed that decision because he—well, why don't you let me finish?

[32] DEAN JUDD: I am, go ahead.

ATTORNEY SILVER: Okay, not on its merits, but on the basis of the procedure—that there was not a hearing. Now, under the circumstances, there's been neither approval or disapproval of the application. We're starting from scratch so to speak so far as President James is concerned. The Personnel Committee has already approved, and the Judge simply indicated that Dr. James made his desicion without communicating with the students. So, that his decision is a nullity at this point. Obviously, he has the

power to make the decision and he will do so, but in order for him to make the decision, I would think that the Court contemplated that the students provide Dr. James with evidence with Dr. James did not get when he made the decision before and it's my purpose, I thought, to provide such evidence to assist Dr. James in reaching his decision. So, that it isn't a question of what went on in Court. The facts that Dr. James has got to determine were not determined in Court, and they were never determined before. This is the time to bring it out and you are cutting me off, and I object to it.

DEAN JUDD: Your objection is noted, it's overruled.

ATTORNEY SILVER: Okay.

DEAN JUDD: The determination was made on what was in the record. I'm not going to paraphrase Judge Clarie's decision, but he did not overrule President Jame's decision you are well aware of that. He retained jurisdiction on that decision until such time as a hearing could be held to clarify the ambiguities and that's exactly what we're attempting to do here. Now, do you have any further questions of Dr. James?

ATTORNEY SILVER: Yes, could we go off the record? I'd like to talk to Dr. James.

DEAN JUDD: No, sir.

ATTORNEY SILVER: Will the record show that I wanted to talk to Dr. James "off the record", and I was told that I couldn't do so?

DEAN JUDD: That request is denied. Dr. James is here as your witness, counselor. We are conducting a hearing; we're not going out of session.

[33] ATTORNEY SILVER: I'm outraged!

DEAN JUDD: Your outrage is noted. Now, do you have further questions of Dr. James?

ATTORNEY SILVER: There's no point in my saying anything further.

DEAN JUDD: Would you please respond to the question—do you have further questions of Dr. James?

ATTORNEY SILVER: Oh, I have many questions, but what is the point of it?

DEAN JUDD: Are you indicating you have no further questions, counselor?

ATTORNEY SILVER: In view of the tact that this meeting is taken, I'm not going to ask anymore questions—

DEAN JUDD: You have no further questions?

ATTORNEY SILVER: Because I feel that it's fruitless to ask any questions.

DEAN JUDD: Would you simply respond "yes" or "no" —do you have further questions of Dr. James?

ATTORNEY SILVER: I answered my question in the only way that I'm going to answer it.

DEAN JUDD: The Hearing Officer is directing you to answer that question, counselor.

ATTORNEY SILVER: Well, how do you expect to enforce that?

DEAN JUDD: Are you going to respond to that.

ATTORNEY SILVER: Well, I told you I'm not, under the circumstances, I'm not going to.

DEAN JUDD: All right, fine. Let the record show that answer. Dr. James, you're excused. Now, therefore, the Hearing Officer's going to continue with his previous line of questioning of last Tuesday.

The Hearing Officer is going to introduce into the record as Hearing Officer's Exhibit N, Investigations of Students for a Democratic Society, Part 3-A, Hearings before the Committee on Internal Security, House of Representatives, 91st Congress, 1st Session, dated July 22, 1969, U.S. GPO Publication 30-133.

Counselor, is there objection to this being entered?

ATTORNEY SILVER: Excuse me.

DEAN JUDD: Would you like to recess, counselor?

[34] ATTORNEY SILVER: I think it might be a good idea; maybe I'll cool down.

DEAN JUDD: The chair is adjourning the session for five minutes.

I'll repeat my earlier statement so counsel may be aware of what I'm asking him to respond to. The Hearing Officer has introduced into the record as Hearing Officer's Exhibit N—the following publication: "Investigations of Students for a Democratic Society, Part 3-A, Hearings before the Committee on Internal Security, House of Representatives, 91st Congress, 1st Session, dated 22 July 1969, U.S. GPO Publication 30-133."

Counselor, do you object to—

ATTORNEY SILVER: Yes, I object to it for—don't you want my reason—don't you want to hear my reason for the record?

DEAN JUDD: Yes, go ahead.

ATTORNEY SILVER: Sure, my objection is that there has been no proof that the proposed organization is in any way identified with any other organization, and any evidence of the characteristics of any other organization is irrelevant, such evidence is irrelevant to the question—the issue before this hearing.

DEAN JUDD: Objection noted, but overruled. I refer counsel to Hearing Officer's Exhibit L previously noted several times which earlier identified the nature of the applying organization.

Would the clerk please mark this as Hearing Officer's Exhibit N.

PERSON: (Dr. Haines Brown) Is it possible to ask a question about your last statement?

DEAN JUDD: I will give this to your counselor.

PERSON: (Dr. Haines Brown) He's not my counselor.

ATTORNEY SILVER: I'm not his counselor. As far as I'm concerned, anyone who wants to speak with your permission—

DEAN JUDD: He is a witness for you, counselor, now if you want to put him on the stand—you put him on the stand.

ATTORNEY SILVER: Oh, well, he can—as far as I'm concerned he's free to say anything he likes because I'm sure that he's a competent, qualified person.

DEAN JUDD: We're not questioning his competency, counselor. Are you putting him on as a witness.

[35] ATTORNEY SILVER: If he has something to say, I'd like to hear it for the record.

DEAN JUDD: Dr. Brown, please proceed.

I, first of all, think that there's a distinction between as appearing as a witness, and having someone as one's counselor, I believe.

DEAD JUDD: Dr. Brown, let me repeat that I advised Attorney Silver and the clients in this case of who would be present and who would not be, to alert my office with due notice, they did so, your name was listed—you were not here at the last hearing; since you are not a defendant in the civil action here, I asked at the time why you were here. Now, you weren't there so you couldn't answer that, but you're either here as a witness, or as an applicant or defendant in the case. Now, if you have some questions—

DR. BROWN: Yes, I do.

DEAN JUDD: —Attorney Silver wants to raise of you, that's fine.

ATTORNEY SILVER: Well, I'd rather not offer this witness in any formal way. This is an informal proceeding, and if he has something to say, I'd like to hear it.

DEAN JUDD: Well, counselor, if he's not a witness, then I can't allow it.

ATTORNEY SILVER: Well, then, he is a witness.

DR. BROWN: Thank you.

DEAN JUDD: Now, would you please answer—would you want to ask him your questions, counselor?

ATTORNEY SILVER: My question is, what would you like to say Dr. —why don't you—

DEAN JUDD: Counselor, that's a very frivolous statement that you're making now. Do you have questions of the witness that are intended to clarify the ambiguities raised here?

ATTORNEY SILVER: Well, may I suggest that he give his testimony, and if there's any of his testimony that you think is offensive, then rule it out.

DEAN JUDD: Agreed, continue, Dr. Brown.

DR. BROWN: Thank you. The—a minute or two ago, you stated Exhibition "L" which I can only gather by implication what it is, nevertheless identifies the character of the petitioning organization, is that correct? Is that the—

DEAN JUDD: I'm not here to answer your questions as a witness.

[36] DR. BROWN: The Exhibition "L" does not look to me, the petitioning organization are of the 6 students—represented by the six students here—petition "L" does not look to me like their petition for recognition.

DEAN JUDD: Counselor, would you please explain to your witness what was introduced into Court which you agreed to. Would you care to present him with this Exhibit L?

DR. BROWN: I'm sorry, this Exhibit wasn't "L" here? Okay, fine. Thank you for clarifying you had that in your hand there. I.d only like to state from my own past experience, two or three years ago I was a student at Michigan State University. There, there was an organization known as "Students for a Democratic Society." It was a rather loosely structured organization, it had members in it who

paid dues to the Michigan State University Students for a Democratic Society. Other people who joined with them were considered to be members, did not pay dues. There was no list—formal list—of members. This organization calling itself "Students for a Democratic Society" had absolutely no connection whatsoever with any other outside organization. They were the recipients of literature from a variety of groups. They had personal contacts with people from a variety of organizations, but there was no connection in terms of their policies, their aims, with any outside organizations whatsoever.

DEAN JUDD: What is your question, counselor?

ATTORNEY SILVER: I would like that the record show the qualifications of Dr. Brown, and I ask Dr. Brown what—do you have, a Ph.D. Degree?

DR. BROWN: That's correct.

ATTORNEY SILVER: And where did you obtain that degree?

DR. BROWN: At Michigan State University.

ATTORNEY SILVER: And what was your subject?

DR. BROWN: History.

ATTORNEY SILVER: History, and what is your connection with Central Connecticut State College?

DR. BROWN: I'm here as a professor of history—assistant professor of history.

ATTORNEY SILVER: What field of history do you teach?

DR. BROWN: My—primarily, Medieval History.

[37] ATTORNEY SILVER: And you teach students at this College?

DR. BROWN: That's correct.

ATTORNEY SILVER: Have you had any relationship with the students who are involved in this hearing?

DR. BROWN: Other than one of friendship; they appealed to me for my counsel and help in this matter and beyond that none.

ATTORNEY SILVER: Have–

DEAN JUDD: Clarification, counselor for the record, I believe Dr. Brown is the proposed faculty advisor for the organization which is before the College. Is that correct?

DR. BROWN: That's correct.

ATTORNEY SILVER: Thank you very much.

DEAN JUDD: Do you have any further questions of Dr. Brown?

ATTORNEY SILVER: No, I don't.

DEAN JUDD: Dr. Brown, would you please pass back Exhibit "L" for the record?

DR. BROWN: Yes.

DEAN JUDD: Thank you. Would the clerk please hand me Exhibit N. Counselor, would you please turn to the page that has been marked? I'd like you to turn to page 713.

ATTORNEY SILVER: What page?

DEAN JUDD: Page 713. You will see a note there signed by a Michael Spiegel, who is identified as a national interim committee member. Where Mr. Spiegel is quoted as saying "both the policy of SDS as a national organization–"

ATTORNEY SILVER: Wait a minute, excuse me, before you say what he quotes, are you offering this in evidence?

DEAN JUDD: I already have.

ATTORNEY SILVER: Oh, you have.

DEAN JUDD: You objected to it and that's been overruled.

ATTORNEY SILVER: Oh, I have another reason for objecting to it. It's all hearsay. It's all hearsay. Mr. Spiegel isn't here to testify. It's hearsay.

DEAN JUDD: Let me comment. This isn't hearsay. It's been introduced before the committee and I'm overruling your objection.

[38] ATTORNEY SILVER: It's hearsay as far as this hearing is concerned.

DEAN JUDD: Would you let me rephrase the question, then you can determine whether you want to answer it or not. Anyway, Mr. Spiegel indicates there that "no chapter may be recognized as affiliated unless it meets certain requirements." My question to you, counselor, if you are to be a local chapter as your application indicated it would be, doesn't the above statement show that there is a national organization and that a national organization known as Students for a Democratic Society does have certain restricting authority?

ATTORNEY SILVER: I'm not going to draw any inferences from any of your exhibits. I regard everyone of these exhibits as irrelevant and I've indicated that over and over again, and I think that Exhibit 1 is clear enough that we are not identified with any other organization. I think you're beating a dead horse here.

DEAN JUDD: I'm trying to clarify the ambiguity, counselor.

ATTORNEY SILVER: Well, you're not clarifying anything. I think we have clarified it and you're just ignoring us.

DEAN JUDD: All right. You care not to respond to that, —let the record show.

Counselor, next question. In the Exhibit L which has been referred to several times, the applying organization indicated, on that sheet, that the chapter would not be under the dictates of any national organization, there is a constitution, there are membership cards, there is a national organ that the Students for a Democratic Society uses; I would like to know how does the local chapter expect to operate as an SDS without any affiliation?

ATTORNEY SILVER: You know, Dean Judd, I'm willing to concede that there is such an organization as SDS nationally and I, as I understand it, there are many SDS organizations nationally. In some chapters they're affiliated, some are unaffiliated. All I'm saying is that our students have taken a position from the beginning that they would not be subject to affiliation or subject to the jurisdiction of any other organization, and for purpose of clarification, we unequivocally indicated in our Exhibit 1 that they're not connected.

DEAN JUDD: All right. A question—an additional question, then, Attorney Silver—is, we would like to know why the applying organization wishes to use a name of an existing national organization if it will have no attachment or affiliation with it?

[39] ATTORNEY SILVER: Well, I didn't participate in the selection of name, but the word "democracy" sounds pretty good to me. It always has been a good word.

DEAN JUDD: No quarrel with the word.

ATTORNEY SILVER: It's always been a good word. I would think it's still a good word.

DEAN JUDD: Well, our question still, why does the local chapter care to use a national name when it's going to have no connection with it? Why did they state in the Student Affairs Committee minutes that they wanted to be able to get national propaganda from the organization. These are the things we're interested about. Now if this is the case, it does indicate to us an affiliation of some type.

ATTORNEY SILVER: What's the last thing you say?

DEAN JUDD: The organization when it came before the Student Affairs Committee indicated they wanted to use the name of a national organization because of what it represented. They also indicated they would want to be in a position to receive certain information from that organization. Now, we want to know why is this the case? If they want to be called this, then why is there no affiliation?

ATTORNEY SILVER: Do you have a record that they said that?

DR. BROWN: The question he's raising is one of the confusing points that was raised in the Court testimony.

ATTORNEY SILVER: There was no Court testimony.

DR. BROWN: Well–

ATTORNEY SILVER: Wait a minute. This is being recorded. Can we have a couple of minutes recess while you're checking that out?

DEAN JUDD: We're recessed for a few minutes.

Getting back to one of my statements regarding the use of national propaganda. This did not occur in the meeting; it will just be on my memory Paul Brown indicated this to me at one time. I'll retract it as a question. However, let me read this to you Attorney Silver, and I'll introduce these into the record as Hearing Officer's Exhibit 0, minutes of the Student Personnel Committee meeting on the 2nd October 1969. I'll share with you a copy of these as I read the questions. "Question: Why does the local chapter care to use the national name if it will not affiliate? Answer: — "Because the name [40] brings to mind the type of organization we wish to bring across, that is, a left-wing organization which will allow students interested in such to express themselves," and that was basically the statement.

ATTORNEY SILVER: Now, where are you reading from?

DEAN JUDD: Now, question 2 . . . (comments on tape, but unclear . . .) Do you care to respond to that point? In other words, our question was, can you clarify here, why do you use the national name if there will be no affiliation? This is one of the ambiguities that the court raised.

ATTORNEY SILVER: Well, I just read the document that you're offering and I can't see that there's anything in it that intimates that these students contemplate any illegal or disruptive practice.

DEAN JUDD: No, there's no question raised to that, counselor. We're raising question about why they would use a national name if there'd be no affiliation?

ATTORNEY SILVER: Well, I think they indicated that the name is identified with left-wing political thinking, and apparently–

DEAN JUDD: No disagreement there.

ATTORNEY SILVER: Yes.

DEAN JUDD: We're trying to get to the essentials here.

ATTORNEY SILVER: Yes, it's left-wing political think and apparently that's the reason why they thought they'd like that name. Just a minute–

Catherine Healey says that she'd like to say something on this question of the selection of the name.

DEAN JUDD: Please do; why don't you come over and sit in the chair so that we can get your answer down for the record. Before you begin, would you please mark this as Hearing Officer's Exhibit 0, and enter it into the record.

MISS HEALEY: During our initial meetings, the group of students present found no more an appropriate name than Students in favor of a Democratic Society.

DEAN JUDD: However, your application was quite different; your application stated that you would be a local chapter of Students for a Democratic Society, which is an existing name of an organization which does have national offices, regional offices, even though–

MISS HEALEY: Mr. Judd, we have since clarified that statement.

[41] DEAN JUDD: Okay, well, I've already ruled on that–it's been introduced and the court will have to exercise its prerogative when it sees that. For many, many reasons I've said I would not act upon that as an amended application because that was not what was before us.

Let me ask you another question here. The Student Affairs Committee minutes of 13 October 1969, which I'll introduce as Hearing Officer's Exhibit P. Mr. Tester—this goes back to the earlier comment that I was raising relative to, you know having the ideas of using national information; the question was raised as to the national alliance as to what the SDS meant by referring to themselves as a local chapter. In answer to that query, Mr. Theodore Tester, representing the SDS, indicated that there was no such thing as an SDS national, that individuals in the organization wanted to keep a loose arrangement and wanted to be able to pick up ideas from several of the factioned groups, and so forth. This is where I gathered the comment about getting ideas from different organizations. And, he further went on to say that the concept exists only in the minds of those who run it. As to the question of "what does the chapter mean," the response was: "that a local chapter of SDS cannot be categorized in the usual manner of student organizations; that the local SDS represents only certain ideas of the national SDS as presently developed."

Now, I'll show this to you, counselor. You see there were inferences in that testimony about alliance, and there were certain things coming from the national organization or several of its factioned groups.

MISS HEALEY: Yes.

ATTORNEY SILVER: Well, I'd like to clarify something here. You, Dean Judd, continually remark in the course of this proceeding, that the Judge is going to decide this, and the Judge is going to decide something else. Well, I'd like to make clear to you what my understanding is, that the Judge is not going to decide this, and he's not going to decide the other thing. The person who's going to decide it is Dr. James, and Dr. James should have before him all of the evidence upon which to make a decision, and I insist that an essential fact that he should have when he makes his decision is the fact that these students have submitted a signed statement that they unequivocally do not identify

or associate with any other organization. This is not for the Judge to decide. This is for Dr. James to decide when he is confronted with a signed [42] statement which indicates a clarification of what the Judge considered to be an ambiguous situation.

DEAN JUDD: Well, your point is well taken as far as that Attorney Silver; when I indicated the Judge will decide, I'm only saying that he will decide as to the propriety of this hearing, whether in fact the procedure as carried out through this case was in accord with his order. Dr. James will decide on the application—there's no question about that—your exhibit is introduced and I cared not to accept it as a consideration for the hearing, but it is there and he will read it and if he cares to take that into account when he makes his decision, that's his prerogative; I can't speak to that.

ATTORNEY SILVER: No.

DEAN JUDD: All right. Well, the Hearing Officer has no further questions to raise at this time. Does counsel have anything further that he would like to say before we close?

Recess granted for two minutes.

ATTORNEY SILVER: Yes, well, we have nothing further to say. Well, maybe I do, afterall, maybe I do have something to say. And it's along this line that I think there is no room whatsoever for identifying the proposed organization with any other organization. I think the position taken of non-identification is clear and unequivocal. I think the only basis upon which, the President can reasonably disapprove of this organization is by attacking the creditability of these students and if he's going to attack the creditability of these students, I think the burden is upon him and there is no evidence that has been put forth at this hearing which in anyway discredits these students, or raises any question as to their honesty and creditability.

DEAN JUDD: Let it be clear that I certainly didn't question that.

ATTORNEY SILVER: Okay, now if in the representations are untrue, then the burden is upon someone to show it and I respectfully submit that there's been no showing that these students are dishonest and if the President finds that the statement of purposes are consistent with legitimate functions of this institution, than I think there is no reasonable basis for denying approval of this organization.

DEAN JUDD: Thank you, Attorney Silver. The Hearing Officer has no further questions. Before adjourning, I'd just like to note again as I did earlier that as soon [43] as we have the transcript typed Attorney Silver, these will be available to you as I noted before. If you want to now request that I supply you with one under the conditions I listed, you won't have to contact me.

ATTORNEY SILVER: Yes, yes, sure, I'd like to get it.

DEAN JUDD: Okay, well fine, this hearing is now adjourned. I thank you all for coming; we're adjourned at 11:04 p.m.

ATTORNEY SILVER: Okay.

Hearing Officer Exhibit G
2107

COMMITTEE EXHIBIT NO. 42
[*New Left Notes*, June 10, 1968]

NATIONAL CONSTITUTION

NATIONAL CONSTITUTION

(as amended at the 1967 National Convention, Ann Arbor, Michigan)

PREAMBLE

Students for a Democratic Society is an association of young people on the left. It seeks to create a sustained community of educational and political concern; one bringing together liberals and radicals, activists and scholars, students and faculty.

It maintains a vision of a democratic society, where at all levels the people have control of the decisions which affect them and the resourrces on which they are dependent. It seeks a relevance through the continual focus on realities and on the programs necessary to effect change at the most basic levels of economic, political, and social organization. It feels the urgency to put forth a radical, democratic program whose methods embody the democratic vision.

ARTICLE I: NAME

The name of the organization shall be Students for a Democratic Society.

ARTICLE II: MEMBERSHIP

Section 1: Membership is open to all who share the commitment of the organization to democracy as a means and as a social goal.

Section 2: SDS is an organization of and for democrats. It is civil libertarian in its treatment of those with whom it disagrees, but clear in its opposition to any anti-democratic principle as a basis for governmental, social, or political organization.

Section 3: DUES: The amount and period of national dues shall be determined by the National Council.

Section 4: ASSOCIATES: Individuals who do not wish to join SDS, but who share the major concerns of the organization, may become associates, with rights and responsibilities as defined by the National Council.

ARTICLE III: CHAPTERS AND AFFILIATES

Section 1: Any group of five or more members may apply to the National Office for charter as a chapter.

Section 2: A chapter may be chartered by the regional council of the area in which it is organized, or by the National Council. The chapter shall submit a membership list, a constitution or statement of principles, and notification of officers or regional representatives. Chapters may be provisionally recognized by the Secretaries or appropriate regional officer pending the meeting of the National Council or regional council respectively.

Section 3: Chapters are expected to operate within the broad terms of policy set by the National Convention and the National Council. Points of conflict should be referred to the National Council and a procedure established to make the issue public to the organization. In matters judged to be detrimental to the interests of the organization, the National Council shall have the power to cease whatever activity has been brought into question. The matter shall be finally resolved by the National Council in meeting or referendum.

Section 4: ASSOCIATED GROUPS: Independent groups can affiliate as associates * * * *.

2170

COMMITTEE EXHIBIT NO. 54

Name *Denise Ryan*

Permanent Address _____

_____ Phone _____

(Zip Code)

Current Address _____

_____ Phone _____

(Zip Code)

School _____ Class _____

[X] Member of

NSU Chapter _____

[ ] Member-at-large

Include Zip Code - Please Print

LOCAL DUES

Sum _____

Date paid _____

Name *Elizabeth Gilbert*

Permanent Address *32245 Queensboro*

Farmington, Mich. Phone *626-3410*

(Zip Code)

Current Address *139 Phillips Hall*

MSU, Lansing, Mich. Phone *355-4827*

(Zip Code)

School *Michigan State* Class *Fresh.*

[X] Member of *M.S.U.*

Michigan State Chapter _____

[ ] Member-at-large

Include Zip Code - Please Print

48823

LOCAL DUES

Sum _____

Date paid _____

Name *Barbara Healy*

Permanent Address *649 Evergreen*

East Lansing, Mich Phone _____

(Zip Code)

Current Address *649 Evergreen*

East Lansing, Mich. Phone _____

(Zip Code)

School *Michigan State* Class _____

[X] Member of

Michigan State Chapter _____

[ ] Member-at-large

Include Zip Code - Please Print

LOCAL DUES

Sum _____

Date paid _____

2171

STUDENTS FOR A DEMOCRATIC SOCIETY is an association of young people of the left. It seeks to create a sustained community of educational and political concern; one bringing together liberals and radicals, activists and scholars, students and faculty. It maintains a vision of a democratic society, where at all levels the people have control of the decisions which affect them and the resources on which they are dependent. It seeks a relevance through the continual focus on realities and on the programs necessary to effect change at the most basic levels of economic, political, and social organization. It feels the urgency to put forth a radical, democratic program whose methods embody the democratic vision.

Preamble, SDS Constitution

This is to certify the membership of

_____

(signature)

in the Students for a Democratic Society. The SDS is an education and social action organization dedicated to increasing democracy in all phases of uncommon life. It seeks to promote the active participation of young people in the formation of a movement to build a society free from poverty, ignorance, war, exploitation and the inhumanity of man to man.

_____ Secretary, SDS

Students for a Democratic Society
1608 West Madison Street
Chicago, Illinois 60612

Name _____

Permanent Address _____

_____ Phone _____

(Zip Code)

Current Address _____

_____ Phone _____

(Zip Code)

School _____ Class _____

☐ Member of

_____ Chapter _____

LOCAL DUES

☐ Member-at-large Sum _____

Include Zip Code - Please Print Date paid _____

I, _____

hereby apply for membership in Students for a Democratic Society and enclose $5 as my annual national membership dues. I understand that $1 is a one year subscription to New Left Notes for the year starting:

Month _____ Day _____ Year ____

Name _____

Permanent Address _____

_____ Phone _____

(Zip Code)

Current Address _____

_____ Phone _____

(Zip Code)

School _____ Class _____

☐ Member of

_____ Chapter _____

LOCAL DUES

☐ Member-at-large Sum _____

Include Zip Code - Please Print Date paid _____

2117

VIOLENT STRUGGLES WITH THE P.L.P.

Members of the Progressive Labor Party and their supporters, referred to as the Worker Student Alliance, were barred from the United Front Against Facism conference. At the opening session, with the approval of the three national secretaries from the Chicago-based SDS faction, SDS members present helped the Plack Panthers to identify representatives of the ostracized groups and they were ejected, Mark Rudd reported.

On the following day, SDS officers and members admittedly joined Panthers in forcibly ejecting PLP members from a nearby park where they were distributing leaflets airing their views on the conference. The next day, PLP members resisted when told to discontinue leafleting in the park and "Ten PL-ers would up in the hospital," according to Rudd. The national secretary acknowledged that the SDS national leadership was subsequently criticized in a conference caucus because the PLP was not disruptive and "our rough handling of PL was more a gang-like vendetta than political." The national officers' response was that the error in handling PLP was "not too much struggle, but perhaps not enough struggle, confrontation, and polarization."

Mark Rudd reported more concern over criticis, in caucus that SDS national officers could not in good faith attack the Progressive Lavor Party when SDS was willing to share the speakers' podium at the UFAF conference with a spokesman for the Communist Party, U.S.A. Rudd stated SDS national officers who spoke at the conference "did attack the CP revisionists," but the attack "could have been stronger" and it was high time to launch an "intense struggle with the CP revisionists." Rudd expressed regret that the Black Panthers had turned to the Communist Party "for alliance and material aid" and had adopted "a legal form of struggle." The SDS response, he said, must be "to engage in revolutionary practice" and escalate the struggle." (pages 1, 2, and 3)

A news item from Boston alleged that 25 Progressive Labor Party and Worker Student Alliance members broke up an SDS meeting held on July 17 to plan fall strategy. John Pennington, leader of the Progressive Labor-controlled faction of SDS, reportedly announced that his group would continue such actions until it attained strength enough to seize the national office in Chicago. (page 9)

NEW EDITOR OF NEW LEFT NOTES

Morris Older was identified on the masthead as the editor of *New Left Notes*, rather than Joe Tashiro who had been listed as editor in previous editions.

CHANGE IN ADDRESS OF REGIONAL OFFICE

The address of the Michigan regional office of SDS was listed as Post Office Box 8316 in Detroit. Previous issues carried the address of Post Office Box 625 in Ann Arbor.

NEW LEFT NOTES, vol. 4, No. 26, August 1, 1969 (published by SDS National Office, 1608 West Madison St., Chicago, Ill.)

NATIONAL ACTION IN CHICAGO, OCTOBER 11

New Left Notes reprinted the text of a brochure titled, "BRING THE WAR HOME!" soliciting demonstrators for a National Action in Chicago October 11. The brochure, produced by the national office for mass distribution, invited readers to join SDS and "tens of thousands of people" who would be demonstrating in Chicago.

Recalling that about 10,000 persons turned out for demonstrations at the time of the Democratic National Convention and *"tore up pig city for five days,"* the brochure insisted that:

> *This fall, people are coming back to Chicago: more powerful, better organized, and more together*

*than we were last August. * * * We are coming back to Chicago, and we are going to bring those we left behind last year.* [Emphasis in original.]

The 1969 demonstrations under SDS auspices would differ from the 1968 action sponsored by the National Mobilization Committee To End the War in Vietnam in that protests would be registered, not just against the Vietnam war or "foreign policy," but against "the whole imperialist system." Calls for withdrawal of troops from Vietnam and the rest of the seven SDS demands were being coupled.

2125

NEW NORTHWEST REGIONAL OFFICE

The *New Left Notes* list of regional offices for the first time referred to a Northwest office at 4126 Roosevelt Way in Seattle. The address of the New Orleans regional office was changed to Post Office Box 4035, Carrolton Station, New Orleans. Regional offices listed now totaled 14. (page 6)

NEW LEFT NOTES, vol. 4, No. —,
September 12, 1969[1]

(published by SDS National Office, 1608 West Madison St., Chicago, Ill.)

A CALL FOR CLASS WAR IN THE STREETS

Violent and destructive aims of the SDS national leadership, to be reflected in its National Act in Chicago October 8-11 as well as in its long-range program, were acknowledged by SDS National Education Secretary Bill Ayers.

Ayers presented and defended views which he described as the "Weatherman" or "Weather Bureau" position in SDS. His remarks, printed in *New Left Notes*, were excerpted from a speech delivered by Ayers at a Midwest SDS confer-

[1]Front page wrongly dated Aug. 29, 1969.

ence held in Cleveland August 29-September 1, 1969, on the subject of the National Action. The strategy proposed for the forthcoming National Action in Chicago, he said, must be aimed at supporting the National Liberation Front in Vietnam "concretely," and at building Weatherman and a fighting revolutionary youth movement." This meant, to Ayers, not getting involved in actions which merely protested that something is wrong, but creating class war in the streets:

> We have to fight and show people through struggle our commitment, * * * our willingness to die in the struggle to defeat US imperialism. * * * October 8-11 is a concrete way that we can do that. I think people should push out this slogan "Bring the War Home". We're not just saying bring the troops home, bring the US troops home and deploy them some place some other time, we're saying bring the war home. We're saying you're going to pay a price because increasingly guys in the army are going to shoot you in the back, increasingly the guys in the army are going to * * * shoot over the heads of the blacks, increasingly this country is going to be torn down, and we're not going to bring the troops home to be deployed someplace else, we're going to bring the war home, WE'RE GOING TO CREATE CLASS WAR IN THE STREETS AND INSTITUTIONS OF THIS COUNTRY, and we're going to make them pay a price, and the price ultimately is going to be total defeat for them. That's the kind of thing that we have to convey, and that's the kind of thing that we have to build. [Emphasis supplied.]

Ayers derided those who called for "united front" actions and said it was necessary to ignore the advice of certain other groups in "the movement" such as the newspaper, the *Guardian*, and "certain local Newsreels." "* * * we have one task," Ayers said, "and that's to make ourselves into tools of the revolution."

Acknowledging that "movement people" would be among those alienated by SDS actions, Ayers claimed that the

"polarization" resulting from SDS actions nevertheless would also lead to change. In Detroit, for example:

> They've been to every drive-in, every high school, and people have an opinion of SDS. How many places has anybody even heard of it? When you say SDS in Detroit, they say oh, those are those broads who beat up guys, or those are those people who come into drive-ins, and that polarization is an important thing. * * *

The SDS denial that it has urged demonstrators to bring guns to Chicago in October does not mean that SDS rejects resort to arms and is not prepared for a military confrontation in the future, Ayers warned:

> And when we make clear that we're not urging anybody to bring guns to Chicago, we're not urging anybody to shoot from a crowd, but we're also going to make it clear that when a pig gets iced that's a good thing, and that everyone who considers himself a revolutionary should be armed, should own a gun, should have a gun in his home.
>
> Since our militance is going to obviously lead to a military confrontation, maybe not this year, then the fact that most of us in here don't even

HEARING OFFICER EXHIBIT H

133

COMMITTEE EXHIBIT NO. 1—Continued

STATEMENTS (continued):

Mark Rudd, an SDS leader in riots at Columbia University, in letter to president of the university dated April 12, 1968, prior to the seizure of campus buildings:

> "You are quite right in fearing that the situation is potentially dangerous. If we win, we will take control of your world, your corporation, your university and attempt to mold a world in which we and other people can live as human beings. We will have to destroy at times, even violently, in order to end your power and your system—but that is a far cry from nihilism."[31]

Greg Calvert, an SDS spokesman who has traveled in the Midwest to speak before various SDS chapters, was quoted as describing SDS motives and goals in society today as follows:

> "We are trying to build a guerrilla force in an urban environment; we are actively organizing sedition."[32]

Carl Davidson, an SDS spokesman, speaking at the University of Illinois in 1967:

> Davidson stated that students could not free their universities without freeing all of society and that anything destroying the "United States system" would be beneficial. He told the student listeners that one weapon was to shut down "this place".[33]

An SDS leader, speaking at the SDS national convention in June, 1965, at a camp near Kewadin, Mich., called for deliberate violation of the sedition statutes by Students for a Democratic Society members, which, it was hoped,

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[31] Ibid.

[32] Ibid.

[33] Ibid.

would result in mass arrests and a "political trial" of the organization.[34]

Position on Communists and "communism"

Michael Klonsky and *Bernardine Dohrn*, two of the three national secretaries of SDS, announced at a public session of the organization's June 1968 convention that they were "communists". They insisted the word be spelled with a small "c" to distinguish SDS leadership from that of the disciplined Communist organizations such as the Communist Party.[35]

Michael Klonsky, SDS national secretary, speech at a rally at the University of Florida, April 11, 1969:

> He said that it was time for revolution and for students and the oppressed minority to kick out the present system and form a "truly communistic society that would work for the poor and the oppressed."[36]

[34] Hoover, Feb. 10, 1966 testimony, previously cited. SDS leader not identified.

[35] James L. Gallagher, testimony previously cited.

[36] William C. Sullivan, April 27, 1969 statement, previously cited.

HEARING OFFICER EXHIBIT L

RCD
3 October 1969

What follows is a brief statement of purpose of the group of students at CCSC who would like to form a local chapter of Students for a Democratic Society (S.D.S.).

1. Because the university is intended to be the arens of education, where there is an unfettered exchange of ideas, S.D.S. would provide *a forum* of discussion and self-education for students developing an analysis of American society and institutions, including higher education, and the world situation in general.

2. Because it is felt that ideas without parallel in deeds are empty and ephemeral, and that no area of life exists in a vacuum and unrelated to all other areas of life, S.D.S. would provide *an agency* for integrating thought with action so as to bring about constructive changes in the university, in American life, and the world.

3. Because of the responsibility of all peoples for the welfare of others, S.D.S. would provide *a coordinating body* for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or potentially in accord with the purposes of the CCSC chapter of S.D.S.

Officers: Lawrence Stub, Frank Ziccardi.

Procedures: (1) meetings once a week. (2) membership completely open to students and faculty. (3) *voluntary dues.* (4) elections held regularly (5) CCSC Students for a Democratic Society are not under the dictates of any National organization.

HEARING OFFICER EXHIBIT N

COMMITTEE EXHIBIT NO. 1—Continued

Oct. 16, 1968

The policy of SDS as a national organization is that no chapter may be recognized as affiliated with the national organization if it has a policy of exclusion of anyone from membership of the local chapter on the basis of race, religion, national origin, or political persuasion. *The George Washington University chapter* is recognized by the national organization, and thus meets these requirements.

/s/ Mike Spiegal
Member, National Interim
Committee, SDS

HEARING OFFICER'S EXHIBIT O

CENTRAL CONNECTICUT STATE COLLEGE
New Britain, Connecticut

Minutes of the Student Affairs Committee Meeting
13 October 1969

Discussion on Students for a Democratic Society (S.D.S.)- Prior to inviting in representatives of the above referred organization the Committee discussed the organization with the following points being indicated by the Committee: (1) What was to be the relationship of the local chapter to the national organization, (2) concern was evidenced over the violent response of the national organization and many local chapters throughout the country, (3) Which wing of the national organization will the local chapter affiliate or associate with, (4) such an organization should have the right to exist on the campus, and (5) the Committee felt the statement of purpose was clear and in theory most could subscribe to it. The Committee indicated that the organization had not complied with the Statement on Rights, Freedoms, and Responsibilities of Students section concerning the recognition of organizations, to wit: statement of procedures, criteria for membership and a list of officers who were in good academic standing. The Committee then invited in representatives of the S.D.S., Miss Catherine Healey, student, and Dr. Haines Brown, faculty advisor. The following represents a summary of the comments by the Committee and S.D.S., representatives:

(1) Q. What are the ties between the local and national?
A. The Chapter does not affiliate with the national organization; we will be completely independent.

(2) Q. Why does the local chapter care to use the national name if it will not affiliate?
A. Because the name brings to mind the type of organization we wish to bring across, that is

a left-wing organization which will allow students interested in such to express themselves.

(3) Q. How would you respond to issues of violence as other S.D.S., chapters have?
A. Our action would have to be dependent upon each issue.

(4) Q. Would you use any means possible?
A. No I can't say that; would not know until we know what the issues are.

(5) Q. Would you be open to all students?
A. Yes.

(6) Q. Would you seek funds from Student Government?
A. Yes.

(7) Q. Could you envision the S.D.S. interrupting a class?
A. Impossible for me to say.

(8) Q. Has the Statement of Purpose as presented to the Student Affairs Committee been approved by the membership?
A. Yes.

The Committee requested of the representatives present that they: (a) produce a set of procedures (b) criteria for membership (c) list of officers who are in acceptable academic standing and (d) a statement of what affiliation to the national organization is intended by the local chapter. The Committee indicated that it expected to act in good grace and intellectual honesty on the organization's request for recognition but would defer action until such time as the above requirements are met. When asked when this would be it was noted that the Committee would be meeting next on 13 October.

HEARING OFFICER'S EXHIBIT P

CENTRAL CONNECTICUT STATE COLLEGE
New Britain, Connecticut

Minutes of the Student Affairs Committee Meeting
13 October 1969

Present: Dr. DeNuccio, Mr. Erickson, Dr. Kahn, Miss Lippia, Mr. McDonald, Miss Schaperow, Professor Swann, and R. L. Judd, Chairman.

The meeting was called to order at 3:40 p.m., in the Conference Room of the Vice-President for Academic Affairs by the Chairman.

1. The minutes of the 2 October 1969 meeting were approved as printed on motion of (Lippia-Kahn).

2. Committee action on recognition of propose college student organizations.

a. Commuter Club – The Committee reviewed the constitution of the Commuter Club whose purpose shall be to "unify commuters into a recognizable force that will promote greater participation in all phases of campus life." The Organizational officers at this time are President Hopeton Scott, Secretary Nancy Larson and Treasurer Charles Chauvin; faculty advisor, Mr. Enck, History Department Students.

Motion, (Lippia-Swann) that the Commuter Club be recognized as an official college organization.

Motion carried, 8 yeas *SAC-69-4*

b. Physical Education Majors Association – The Committee reviewed the constitution of the above referred group whose purpose is to provide services pertaining

to Physical Education to all students, faculty, and the community. To promote interest in Physical Education, Health, and Recreational Activities. To encourage membership in the State and National Physical Educational Professional Organization. To uphold the standards of the Physical Education profession. To provide social and recreational activities for its members." Present officers are President James Kahn, Vice-President David Campo, Corresponding Secretary Diane Albert, Recording Secretary Nancy LeFebvre, Treasurer Kenneth McPhee; faculty advisor, Miss Mary Hoyle, PE Department.

Motion, (Kahn-DeNuccio) that recognition be granted to the Physical Education Majors Organization.

Motion carried, 7 yeas *SAC-69-5*

c. Liberal Party – The Committee reviewed the constitution of the Liberal Party whose purpose is "to promote better campus relations along with having a second party to run 42 candidates in the All-campus elections which occur during the latter part of April." The officers are President Brendan Kennedy, Vice-President Rosemary Campane; faculty advisor, Dr. Charles Kerr, Political Science Department.

Motion, (Erickson-Lippia) that recognition be granted of the Liberal Party.

Motion carried, 8 yeas *SAC-69-6*

d. Il Circolo Italiano – The Committee reviewed the purpose of the Il Circolo Italiano stated as follows "... in order to promote good fellowship and to promote the best interests in elements of Italian culture, art, and civiliattion, do ordain, and establish this constitution as the fundamental law of this organization." The current officers are President Louis Magnano, Vice-President Nicky Cofaldi, Secretary Nancy Rosso, Treasurer Elio Gugliotti; faculty advisor, Mr. Giovanni Lonardo, Modern Language Department.

Motion. (DeNuccio-Lippia) that recognition be granted to the Il Circolo Italiano.
Motion Carried. 8 years *SAC-69-7*

e. Students for a Democratic Society (SDS) – Considerable discussion was made on the above organization. Question was raised as to the national alliance and to what the S.D.S. meant by referring to themselves as a "Local Chapter." In answer to this query, Mr. Theodore Tester representing the S.D.S. indicated that there was no such thing as a S.D.S. National; that individuals in the organization wanted to keep a loose arrangement and wanted to be able to pick ideas from several of the factioned groups; he stated that the concept of S.D.S. exists in the minds of those who run it. As to the question of what does a chapter mean, the response was that a local chapter of S.D.S. cannot be categorized in the usual manner of student organizations; that the local S.D.S. represents only certain ideas of the national S.D.S. as presently developed.

Considerable comment was made on what other types of political action groups are on campus such as the Young Americans for Freedom, the Young Democrats, and the Young Republicans and considerable question was raised that on the exclusion of an action group representing another sphere of thought, to wit if we have one group such as YAF representing a conservative right wing group should we not allow for students to identify with one representing the left wing?

The Committee reviewed the statement of purpose of the organization which is: "Because the university is intended to be the arena of education where there is an unfettered exchange of ideas, S.D.S. would provide *a forum* of discussion and self-education for students developing and analysis of American society and institutions, including higher education, and the world situation in general. Because it is felt that ideas without parallel in deed are empty and ephemeral, and that

no area of life exists in a vacuum and unrelated to all other areas of life, S.D.S. would provide an agency for integrating thought with action so as to bring about constructive changes in the university, in American life, and the world. Because of the responsibility of all peoples for the welfare of others, S.D.S. would provide *a coordinating body* for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or portentially in accord with the purposes of the CCSC chapter of S.D.S." Current officers are Lawrence Stub, Frank Ziccardi, and faculty advisor, Dr. Haines Brown, History Department.

Motion, (Kahn-Schperow) that recognition be granted to Local Chapter, S.D.S. The Committee in reaching a vote on this motion qualified itself as follows: (a) that in so voting it did so with the concept in mind of allowing opposing organizations to present various views, (b) local chapter has claimed no national allegiance to a super-organziation, (c) that the Committee would consider the immediate suspension of the local chapter if its activities, programs, and functions were incompatible with those of the College and specifically calls to the attention of the Chapter Section 5-E of the Statement on Rights, Freedoms and Responsibilities of Students is understood by this organization: "Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the College, to to interfere with the rights of others." Lastly, that the recognition of the organization is acted upon in light of allowing students to have the opportunity to exchange ideas through an organization in the academic market place.

A minority viewpoint was presented as follows: (a) that the organization did not conform to meeting the

implied requirements for institutional recognition as other campus organizations have, to wit a specific consituation, and (b) there is a serious lack of clarity between what the meaning of local chapter is and fact that the organization claims not to be under the dictate of any national organization, and lastly, that the minority vote was made not to prohibit a left wing group but on the nature of the present organization before the Student Affairs Committee.

Motion Carried, 6 yeas, 2 nays *SAC-69-8*

3. Discussion was next on policies and procedures for recognizing organizations.

Motion, (Kahn-Swann) that no new organ-

Motion, (Kah-Swann) that no new organiations be acted upon until the Committee has developed more acceptable procedures for such review.

Motion Carried, 7 yeas *SAC-69-9*

Meeting adjourned at 5:11 p.m.

Respectfully submitted,

Richad

Richard L. Judd
Executive Secretary

tp

APPELLANT'S EXHIBIT NO. 1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CATHERINE J. HEALY, *et al.*,
Plaintiffs,

v. Civil Action No. 13721

F. DON JAMES, *et al.*,
Defendants.

May 12, 1970

STATEMENT

The undersigned, being the plaintiffs in the case of Catherine J. Healty et al. v. F. Don James et al., make the following statement:

We reaffirm the statement of purposes recited in the application submitted to the Student Personnel Committee.

However, in view of the decision of T. Emmet Clarie, United States District Court Judge in this case, dated April 24, 1970, there appears to be ambiguity concerning the structure of the organization referred to as a "local chapter of Students for a Democratic Society."

In order to remove all doubt, we hereby affirm that the proposed organization shall be called Students for a Democratic Society of Central Connecticut State College, and it

shall have no connection whatsoever to the structure of an existing national organization, or organizations, bearing the name Students for a Democratic Society. Furthermore, the organization shall be unaffiliated with any other organization.

We affirm out constitutional rights of freedom of speech and freedom of association. It is our expectation that in the exercise of our constitutional freedoms that we may be effective in communicating and establishing greater understanding with students of all political persuasion from the left to the right.

We claim that we are entitled to the presumption of honorable and legal motives and intentions.

We claim further that any inference that the undersigned have an illegal purpose is unwarranted, discriminatory and unconstitutional.

/s/Paul Peter Brown

/s/Catherine J. Healy

/s/Joel H. Blunt

/s/Edward John O'Neil

/s/ [signature illegible]

/s/Peter David Brown, Jr.

CENTRAL CONNECTICUT STATE COLLEGE

New Britain, Connecticut

July 10, 1970

Office of the President

Mr. Richard L. Judd, Acting Dean of Student Affairs
Central Connecticut State College
New Britain, Connecticut

Dear Mr. Judd:

In accordance with the Memorandum of Decision, 24 April 1970, of the Honorable T. Emmet Clarie, United States District Judge, hearings were held on 19 and 25 May 1970 by the Acting Dean of Student Affairs who was designated by this office to conduct the hearings. Applicants listed in Civil Action 13721 (as stipulated and agreed upon by counsel) were notified of the hearings and given the opportunity to be heard.

During these hearings, the applying student group through its attorney, Abraham S. Silver, was requested to clarify its affiliation and/or association with the national organization of Students for a Democratic Society (a.k.a. SDS) and/or any of its splinter groups. The Hearing Officer raised questions several times on the former, and applicants' attorney refused to clarify the ambiguity existent in the application of the applying group of 3 October 1969.

Thus, the hearing failed to resolve a significant question which the College sought to clarify; that is, what is the nature of affiliation or association of the applying group? If the group utilizes the name of an existing organization, how can it "not be under the dictates of any organization" as the applying group stated? (Hearing Officer's Exhibit L)

The Hearing Officer introduced as his Exhibit G, on P. 2107, the national constitution of SDS, which in Article 3 states certain requirements applying to chapters and affiliates, e.g., "chapters are expected to operate within the broad terms of policies set by the national convention and the national council." Furthermore, Hearing Officer's Exhibit N, P. 713, contains a note signed by a Mike Spiegel indicating a national SDS policy of requiring certain things of local chapters.

Also, Hearing Officer's Exhibit G, Ps. 2170 and 2171, contain reproductions of local and national membership cards, indicating ties between local and national offices, and further denotes joint membership record-keeping systems.

In addition to not resolving ambiguous portions of the group's application, the Hearing Officer introduced other documents detailing various activities of local SDS Chapters, Regional Headquarters of the SDS, the National Offices, and officers associated with the organization. It appears to me that these activities would be a disruptive influence at CCSC.

Specific reference is drawn to Hearing Officer's Exhibit G, P. 2117, detailing disruptive activities of SDS in Columbus, Ohio, schools; on P. 2125, statements calling for "class war in the streets"; Hearing Officer's Exhibit H, P. 133, quoting a Mark Rudd, "we will have to destroy at times, even violently, in order to end your power and your system" and on the same page, a Greg Kalbert saying, "to build a guerilla force in an urban environment; we are actively organizing sedition;" Hearing Officer's Exhibit N examines the activities of the George Washington University SDS which fomented violence, including the take-over of several buildings and caused significant damage to University property.

Accordingly, in view of the documentary evidence filed by the Hearing Officer, and the intransigence of counsel for the applicants, I reaffirm my earlier decision to deny recognition to the applying group. Recognition of such group, in my judgment, would be contrary to the orderly process of change and would be contrary to the philosophy and lawful mission of this College.

Sincerely yours,

F. Don James
PRESIDENT

fdj: lp

OPINIONS

The opinion of the United States Court of Appeals for the Second Circuit, dated July 15, 1971, and the opinions of the United States District Court, District of Connecticut, dated October 29, 1970 and April 24, 1970, are contained in the Appendix to the Petition for a Writ of Certiorani at pp. la, 40a and 50a respectively.

Supreme Court of the United States

No. 71-452 ----October Term, 19

Catherine J. Healy, Et Al.,

Petitioners

v.

F. Don James, Et Al.

ORDER ALLOWING CERTIORARI. Filed December 7 ---------- , 19 71

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second ---------- Circuit is granted.

FILE COPY

Supreme Court, U.S.
FILED
SEP 29 1971
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-452

CATHERINE J. HEALY, *et al.*,

Petitioners,

—v.—

F. DON JAMES, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. .....

CATHERINE J. HEALY, *et al.*,

Petitioners,

—v.—

F. DON JAMES, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered July 15, 1971.

Opinions Below

The two District Court opinions in this case, one requiring a hearing, the other reviewing it, appear respectively at 311 F. Supp. 1275 (D. Conn. 1970) and 319 F. Supp. 113 (D. Conn. 1970). They are set out in the Appendix, *infra*, pp. 40a and 50a. The opinion of the Court of Appeals is unreported. It is set out in the Appendix, *infra*, p. 1a.

Jurisdiction

The judgment of the United States Court of Appeals for the Second Circuit was entered on July 15, 1971. The jurisdiction of this Court rests on 28 U.S.C., §1254(1).

Question Presented

Whether the president of a state college may deny to a student political organization access to university facilities without a showing of a clear and present danger of violence or campus disruption.

Statute and Constitutional Provisions Involved

The statute involved is section one of the Civil Rights Act of 1871, 42 U.S.C. §1983. The constitutional provisions are the First and Fourteenth Amendments.

Statement of the Case

Petitioners, students at Central Connecticut State College (CCSC), met together in September of 1969 and decided to request the college administration to grant official recognition to what they styled "a local chapter of Students for a Democratic Society" that they wished to form (S. ¶8).[1] Official recognition, had it been granted, would have allowed petitioners to use the college's bulle-

[1] The symbol "S" refers to a stipulation between petitioners and repondents, dated March 10, 1970, and the exhibits attached thereto, which are part of the Record filed with the Clerk of this Court.

tin boards and newspaper for S.D.S. notices and to use campus building for meetings (H. pp. 17-18; 46; 47).[2]

Petitioners' application came before the Student Affairs Committee, a student-faculty body, on October 2, 1969. The Committee, concerned with violence on campus and the violent reputation of S.D.S.'s national organization, asked what the ties of the local chapter to the national would be. Petitioners replied that the local chapter would be "completely independent" and that the name was being used only because it "brings to mind the type of organization [they] wish to bring across, that is a left-wing organization which will allow students interested in such to express themselves." The committee also asked petitioners whether they envisioned that S.D.S. might become involved in campus violence or the disruption of classes. They replied that they could not predict what the organization's attitude might be without knowing all the particulars of the situation (X. O. pp. 2-3).[3] On October 13, 1969, after having received a formal statement from petitioners that CCSC-SDS would not be "under the dictates of any National organization" (X. L.), the committee approved the application by a vote of 6 to 2, with the explicit condition "that the Committee would consider the immediate suspension of the local chapter if its activities, programs, and functions were incompatible with those of the College" (X. P. pp. 2-3). Respondent James, the President of the University, declined to accept the advice of

[2] The symbol "H" refers to the transcript of the first hearing before Judge Clarie which is part of the Record filed with the Clerk of the Court.

[3] The symbol "X" refers to exhibits attached to the Report of the Hearing Officer, which is part of the Record filed with the Clerk of this Court.

the committee and, on October 30, 1969, denied recognition to the chapter; he felt that "the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be" (S. ¶13). When petitioners and others met, a week later, in a coffee shop at the Student Center on campus to discuss the respondent James's decision, he interpreted this as a meeting of CCSC-SDS and ordered the meeting to disband (S. ¶¶14, 15 (exhibit E)). Petitioners complied without protest.

On February 24, 1970, petitioners began this lawsuit to seek official campus recognition of CCSC-SDS. After a hearing on a motion for preliminary injunction, Judge Clarie ordered the college to hold a hearing to resolve ambiguities about the relationship between CCSC-SDS and the national organization. He felt that "[t]he term itself 'local chapter,' strongly infers some sort of affiliation with a more extensive parent organization. . . ." App., *infra*, p. 62a. The hearing was held May 19th and 25th, 1970.[4]

[4] The district court held that the hearing met "the formal requisites of administrative due process," App., *infra*, p. 42a, and did not comment on its narrowness. The majority in the Court of Appeals, however, felt that "disruptive tactics" by petitioners' counsel were the root and cause of the hearing's derailing. This evaluation seems to underlie the majority's rather cryptic conclusion that petitioners "failed to avail themselves of the procedural due process accorded to them." App., *infra*, p. 20a. The characterization of counsel's behavior is unfair, and it is necessary to pursue the point at some length so that this Court is not misled about the heart of the controversy in this case.

The Court of Appeals labelled a number of incidents "disruptive tactics": (1) an objection to tape-recording of the hearing, rather than having a stenographic transcript; (2) an objection to respondent James's absence; (3) two exclamations of exasperation: that

Little additional relevant evidence came to light. For their part, petitioners submitted a statement signed by five of

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"[t]his [hearing] is really terrific" and that he, counsel, was "outraged;" and (4) calling of respondent James as a witness and asking him whether he had made any prejudgment of the case and whether he would be influenced by petitioners' statement that they would have no connection with the SDS national office. App., *infra*, pp. 10a-13a.

(1) The objection to tape recording was made on the ground that it would be impossible to tell until after the hearing whether any portions of the testimony had been missed. (T. 7. The symbol "T" refers to the typed transcript of the administrative hearing of May 19 and 25, 1970, which is part of the Record filed with the Clerk of this Court.) There is no indication in the record that counsel's action was in bad faith, and, in fact, one portion of the typed transcript of the tape indicates that a question from the hearing officer was too unclear to be transcribed (T. 40).

(2) Although the district court opinion stated that a hearing officer could hold the hearing in place of respondent James (App., *infra*, p. 61a), petitioners could legitimately desire respondent James, who would make the final decision, to hear their argument personally; had counsel not objected to this at the hearing, he would surely have been held, on review, to have waived whatever right he might have had to appear before respondent James personally.

(3) From the cold record, one could reasonably conclude that the hearing officer himself precipitated counsel's exasperation. The hearing officer refused to allow respondent James to answer any of counsel's questions. He admitted, for example, that James was counsel's witness but ruled that his was "an improper line of questioning for a client's witness" (T. 30). While he claimed that the hearing was "not a legal proceeding" (T. 7), he continually made final evidentiary decisions that juggled the rules so that only that evidence favorable to James's eventual decision was received. The record is rife with examples of unprincipled decisions fleshed out with ill-used legal terminology. The hearing officer ruled questions about respondent James's prejudgment "irrelevant and immaterial" (T. 27); he ruled that evidence before a Congressional Committee could not be objected to as hearsay (T. 37); citing the advice of "our counsel," he ruled that petitioners' written statement that they had no tie to the SDS national and changing the name of the proposed organization to eliminate the objectionably ambiguous term "local chapter" was an "amended application" that was

their number that SSCS-SDS "shall have no connection whatsoever to the structure of an existing national or-

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"not germane" because "not introduced in the federal record" (T. 29)—apparently reasoning that the ambiguities that the federal judge found in the record could only be resolved by the evidence then before the federal judge. In face of these bizarre rulings, one could hardly say that the lawyer was being intemperate, much less disruptive, for saying "this is really terrific" or that he was "outraged."

(4) While the procedure of calling respondent James personally to the stand as a witness was perhaps unorthodox, it appeared to be necessary in this case. In the first place, counsel wanted the record to reflect that respondent James had made public statements in a speech to the Lions Club which indicated that he had already decided the case, without having held the hearing on which he was to base his decision. Confronting an administrative officer with his own damning statements is certainly not graceful—it is bound to produce a hostile witness—but neither is prejudgment graceful. James appeared voluntarily at the hearing; given this opportunity, counsel proceeded to examine him with the directness that any competent trial lawyer would have practiced in the same situation. Faced with a difficult tactical problem—how to get evidence of prejudice into the record—he used an unusual technique, and his aim seems to have been to reach the truth, not to disrupt the hearing. But counsel had another, more basic reason for wanting to deal directly with respondent James. The hearing officer had effectively stifled petitioners—especially by ruling that their statement disavowing ties to the SDS was not germane. Counsel wanted to cut through the hearing officer's grudging procedure and find out what James thought of the statement, whether he would consider it, and whether he would make any judgments about petitioners' credibility.

Perhaps most important of all, at no time during the hearing, as spirited as the interchanges between counsel and hearing officer seem to have been, did the hearing officer object to counsel's conduct or indicate that he thought counsel's tactics disruptive. The record ought not be distorted now to make it appear that counsel wilfully disrupted the hearing. The line between argument and disruption is sometimes a fine one—compare *In re McConnell*, 370 U.S. 230, 235-36 (1962) with *Parmelee Transportation Co.* v. *Keeshin*, 294 F.2d 310, 314 (7th Cir. 1961) *rev'd*, 370 U.S. 230 (1962)—and an appellate court should be loath to condemn on the basis of a cold, written record.

ganization, or organizations, bearing the name Students for a Democratic Society" (X. 1)[5] and their faculty advisor testified that SDS on a campus where he has been a student, two or three years previously, had "no connection whatsoever" with any outside group (T. 36). Over petitioners' counsel's objection, the hearing officer introduced into evidence the records of Hearings held by the House of Representatives' Committee on Internal Security concerning Students for a Democratic Society to establish the violent character of the SDS national organization and to show provisions in the SDS national constitution requiring adherence to national policies by local affiliates (X. G., H., I., N.).

On July 10, 1970, Respondent James again denied petitioners' application. He stated that the hearing had failed to resolve the ambiguity concerning the connection between CSC-SDS and the national SDS-organization; he failed to understand, he said, how the group could be totally free of any influence from an organization whose name it used. This, he apparently felt, justified imputing to the local the motives of the national. He concluded that recognition "would be contrary to the orderly process of change and would be contrary to the philosophy and lawful mission of this College."

Petitioners returned to Judge Clarie, who had retained jurisdiction in the suit, and moved to reject James's findings. Judge Clarie denied their motion and, on the ground that petitioners had "not sustained their burden of demonstrating that their identifying with the national corporate name of the SDS permits them to function with absolute

[5] The hearing officer volunteered that he did not question the credibility of these petitioners (T. 42).

freedom from the dictates, influence and image of the national organization, notwithstanding their verbal protests to the contrary," App., *infra*, p. 48a, granted summary judgment to respondents. The United States Circuit Court of Appeals for the Second Circuit affirmed the judgment on July 14, 1971, on the ground that petitioners had "not met their burden of complying with the standard established by the college for recognition of campus organizations." App., *infra*, p. 21a. Judge Smith dissented. App., *infra*, p. 32a.

Reasons for Granting the Writ

Certiorari should be granted in this case because the Court of Appeals has decided an important question of federal law which has not been, but should be decided by this Court, and because the decision conflicts in principle with analogous students' rights cases in other circuits. Because "[t]he classroom is peculiarly the 'marketplace of ideas,'" *Keyishian* v. *Board of Regents*, 385 U.S. 589, 603 (1967), this Court should be vigilant to make sure that no one set of ideas achieves an official monopoly.

In *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969), this Court ruled that without a showing of material and substantial harm to the educational process, a public secondary school could not forbid students to wear antiwar armbands in school; school officials must establish that First Amendment activity is "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" (393 U.S. at 513), before they can forbid the activity. The Court in that case, however, was dealing the rights of high school and junior high school students.

petitioners are college students and, because they are more mature and politically responsible[6] than *Tinker's* students, less weight must be accorded a college administrator's interest in discipline and order. See *Eisner* v. *Stamford Board of Education*, 440 F.2d 803, 808 n. 5 (2d Cir. 1971).

Certainly there is an interest in orderly processes on campus, just as in our society as a whole; but before such an interest interferes with the exercise of First Amendment rights, college administrators—like all other public officials—must show a clear and present danger of some substantive evil occurring.

Respondents have abstractly conceded throughout that petitioners have a right to organize and otherwise exercise their First Amendment rights, but have argued that petitioners have no such right to pursue these activities on the college campus and that the burden is on petitioners to prove that their activities are consonant with "the philos-

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[6] Mr. Chief Justice Burger, writing for the plurality in *Tilton* v. *Richardson*, 39 U.S.L.W. 4857 (1971), found a constitutionally significant distinction between elementary and secondary school students on the one hand and college students on the other. In that case, the statute which authorized federal funds to finance the building of "academic facilities" on the campuses of church-related colleges was challenged as an unconstitutional establishment of religion. One of the reasons cited to support the constitutionality of the Act, as distinguished from impermissible enactments which financed pre-college parochial schools, see *Lemon* v. *Kurtzman*, 39 U.S.L.W. 4844 (U.S. Sup. Ct. 1971), was that "college students are less impressionable and less susceptible to . . . indoctrination." 39 U.S.L.W. at 4861.

The Twenty-Sixth Amendment, which has enfranchised virtually every college student in America, further reflects the notion that the maturity of college-age students requires legal recognition. See *Jolicoeur* v. *Mihaly*, 40 U.S.L.W. 2142 (Cal. Sup. Ct. 1971). The Amendment increases the burden on college administrators to abide by the notions of the First Amendment, lest they inadvertently disenfranchise those so recently given the vote.

ophy and lawful mission" of Central Connecticut State College. Both courts have essentially agreed with respondents' position. The district court felt that the burden was on petitioners to prove themselves without ideological stain; the circuit court reasoned that petitioners' failure to avail themselves of the procedural due process granted them was a sufficient reason to support the denial.[4] All these viewpoints, really only variations on a single theme, offend present notions of the First Amendment.

In the first place, the college's action is not merely the failure to bestow a "stamp of approval," as the Second Circuit majority characterized it; in practical effect, it forbids respondents to organize at all. As Judge Smith pointed out in dissent, "what is at issue is whether these students will be permitted to use the buildings and grounds of the campus to conduct meetings and discussions . . ." however informal the meeting and public the place where it is held. When, in November, 1969, some of petitioners and other students met in the campus coffee shop to discuss respondent James's action, two of the Deans of the college appeared and forbade them to continue their meeting on college property. Nor are petitioners permitted to use campus bulletin boards or the student newspaper to inform the student body about meetings and therefore cannot effectively communicate with those most likely to be like-minded. The community to which petitioners belong is

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[4] The Circuit also reasoned that the failure "to submit a copy of their charter or by-laws" (App., *infra*, p. 20a) supported respondent James's denial of the application. Since James did not rely on this as a reason for denying the petition—nor did the district court—it is improper for a reviewing court to adduce it as a reason to justify James's decision. *Trister* v. *University of Mississippi*, 420 F.2d 499, 503 (5th Cir. 1969); *Johnson* v. *Branch*, 364 F.2d 177, 181 (4th Cir. 1966), *cert. denied*, 385 U.S. 1003 (1967).

Central Connecticut State College. They do more than merely attend "during prescribed hours for the purpose of certain types of activities" as did the high school students in *Tinker*, 393 U.S. at 512. Petitioners and other students spend four years of their lives in this community, and the members of that body have an "interest in the functioning of the community in such manner that the channels of communication remain free." *Marsh* v. *Alabama*, 326 U.S. 501, 507 (1946). Just as the Court in *Marsh* subordinated property rights of a private corporation to the First Amendment in order to facilitate that communication, so here it should act to make college administrators aware that they have an identical obligation to open their campuses.

Moreover, the record indicates that the college granted recognition to other student political organizations—Young Americans for Freedom, Young Republicans and Young Democrats (X. P., p. 2). The situation, as Judge Smith's dissent pointed out, is thereby closely analogous to those cases where state school authorities have sought to ban on-campus speakers; the only other court to consider the matter of campus recognition of student organizations found this analogy determinative. *ACLU of Virginia, Inc.* v. *Radford College*, 315 F. Supp. 893, 896-97 (W.D. Va. 1970).

In the speaker cases, the colleges' policies were to permit any speaker to appear on campus except for a very few whose political views were in extreme official disfavor.[8] Both petitioners' case and the speaker-ban cases involve the question of when a university which normally holds

[8] According to Professor Wright, not a single speaker-ban has survived judicial scrutiny. Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1051-52 (1969).

itself open can forbid people coming together for the purpose of political communication. If one draws any distinction between the cases, the case is stronger for recognition of a student political group than for permitting an outside speaker on campus; if there is any misconduct by the students, the university can more readily discipline or prosecute them than it can a speaker who, after his engagement, may be effectively out of reach.

In the speaker-ban cases, the courts have realized that, in order to place a prior restraint on the exercise of First Amendment freedoms, there must be a showing of a clear and present danger of violence, classroom disruption or some other substantive evil that the college could legitimately forbid. See, *e.g.*, *Brooks* v. *Auburn University*, 296 F. Supp. 188, 197 (M.D. Ala.), *aff'd* 412 F.2d 1171 (5th Cir. 1969); *Stacy* v. *Williams*, 306 F. Supp. 963, 971 (N.D. Miss. 1969) (3-judge court); *Snyder* v. *Board of Trustees of the University of Illinois*, 286 F. Supp. 927, 933 (N.D. Ill. 1968) (3-judge court). In this case, viewed most charitably, respondent James was worried about a threat of violence or disruption of classes on campus; but his fears arose out of the apprehension of something far less than a clear and present danger. All the record can be fairly said to show is that some members of the National SDS organization advocate violence on campus.[9] And the

[9] The only evidence which could be said to reflect on petitioners' motives appears in Hearing Officer's Exhibit O. The following dialogue appears in "a summary of the comments by the [Student Affairs] Committee and S.D.S. representatives:"

* * * *

(3) Q. How would you respond to issues of violence as other S.D.S. chapters have? A. Our action would have to be dependent upon each issue.

(Footnote continued on following page)

state could not forbid those members' "advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg* v. *Ohio*, 395 U.S. 444, 447 (1969). Nor should the state be able to forbid any of the petitioners from speaking to a student group—or to each other—on campus on any lesser showing—certainly not on the sole ground that petitioners belong to an organization with the same name as an organization, some of whose members purportedly favor violence.

Both the district court and the court of appeals seemed to feel that the burden lay on petitioners to abjure any relationship with the SDS national and justify their

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(4) Q. Would you use any means possible? A. No, I can't say that; would not know until we know what the issues are.

* * * *

(7) Q. Could you envision the S.D.S. interrupting a class? A. Impossible for me to say.

The answers above are attributed to petitioner Healy and the faculty advisor of CCSC-SDS. The questions were not repeated at the hearing in May, 1970, when petitioners' attorney was present. The answers might raise some suspicions. But to establish a mere possibility of disruption is not enough: the burden on the state is to show a high probability of serious disruption or violence. A vague possibility of disruption in a hypothetical future is a danger neither clear nor present. See *Whitney* v. *California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring); *Brandenburg* v. *Ohio*, 395 U.S. 444, 447 (1969) ("imminent lawless action"). The progress of this case speaks most eloquently for the petitioners' inclinations. They have sought, in an orderly manner, first through the procedures of the college, then through those of the courts, to obtain recognition for their organization; in the one instance when college officials ordered them to disband a meeting on campus, they did so without protest. The inkling of suspicion aroused by their perhaps too-candid answers cannot bar petitioners from exercising their First Amendment rights to assemble and speak.

presence on campus, and that, failing an explanation that satisfied respondent James, they might be excluded from campus. First Amendment law, however, is to the contrary: "[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc.* v. *Sullivan,* 372 U.S. 58, 70 (1963). And when speech is in the balance, "the State [must] bear the burden of persuasion . . ." that the burden on the exercise of First Amendment rights is justified. *Speiser* v. *Randall,* 357 U.S. 513, 526 (1958). As Judge Smith remarked in dissent, "the burden of providing a justification for this type of prior restraint rests squarely on the shoulders of those who seek to impose it." App. *infra,* p. 38a. The state has totally failed to meet this burden.[10] There is not a scintilla of evidence to indicate that petitioners share any of the views of S.D.S.'s national body. They stated that they will be absolutely independent of the national and that the name was chosen for its publicity value—so that other students would recognize

[10] Not only did the state have the burden before respondent James, but also, in light of *Freedman* v. *Maryland,* 380 U.S. 51 (1965), the burden of convincing the federal district court—or an appropriate state court—that an injunction should issue to enforce respondent James' decision. The teaching of the *Freedman* line of cases is twofold: "that a judicial body, following an adversary hearing, must decide on the protected character of the speech, and that the judicial determination must either precede or immediately follow any governmental action which restricts speech." Monaghan, First Amendment "Due Process," 83 Harv. L. Rev. 518 (1970). Federal courts have already found that *Freedman's* major principles, enunciated in the obscenity area, apply to the functioning of state schools, at both college and secondary school levels. See *Eisner* v. *Stamford Board of Education,* 440 F.2d 803, 810 (2d Cir. 1971); *Snyder* v. *Board of Trustees of the University of Illinois,* 286 F. Supp. 927, 936 (N.D. Ill., 1968) (3-judge court).

their organization as a left-wing student organization. The college introduced no evidence to rebut this testimony; it is simply reasoned that the use of the name must involve an affiliation with the national. There is only the barest suspicion that petitioners themselves intend violence or disruption on campus. One is compelled to conclude that petitioners have been denied the right to organize because the college administration has hoped to keep certain ideas and undesirable elements off-campus.

The bane of the First Amendment is the administrator who makes his decisions on the basis of broad categories and pat labels without considering whether any real or substantial danger is involved. That is the situation here, and it is urgent that this Court make clear that state college administrators, no less than other public officials, must be responsive to the rigid demands of the First Amendment. To limit speech or association, they must identify a substantial, imminent danger on the basis of competent evidence; as Tinker phrased it, "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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